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6 COURT OF APPEALS
7 OF THE STATE OF WASHINGTON
8 DIVISION II

9 IN RE THE PERSONAL RESTRAINT
10 PETITION OF:

11 DARRELL KANTREAL JACKSON

12 Petitioner.

NO. 46411-0-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

13
14 A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

- 15 1. Whether Petitioner failed to meet his burden of showing prosecutorial
16 misconduct by failing to show improper conduct.
- 17 2. Whether the trial court properly instructed the jury.
- 18 3. Whether Petitioner's convictions of first degree burglary and first degree
19 robbery, the imposition of deadly weapon and firearm sentence
20 enhancements for those counts, and the verdicts of guilty of first degree
21 murder were consistent with double jeopardy protections.
- 22 4. Whether Petitioner failed to show ineffective assistance of counsel where he
23 failed to show that his counsel's performance was deficient.
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1 B. STATUS OF PETITIONER:

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3 On January 16, 2008, the State charged Darrell Kantreal Jackson, hereinafter
4 referred to as "Petitioner," by information with the premeditated first degree murder of
5 Ruben Doria in count I, the premeditated first degree murder of Abraham Abrazado in
6 count II, first degree robbery in count III, and first degree burglary in count IV. Appendix
7 A (information). Counts I and II alleged, as aggravating circumstances, [1] "that the
8 defendant or an accomplice committed the murder to conceal the commission of a crime or
9 to protect or conceal the identity of any person committing a crime, and/or [2] that there
10 was more than one victim and the murders were part of a common scheme or plan or the
11 result of a single act of the defednant, and/or [3] the murder was committed in the course
12 of, in furtherance of, or in immediate flight from the crime of Robbery in the First or
13 Second Degree, or Burglary in the First Degree[.]" Appendix A. Finally, all counts alleged
14 deadly weapon sentencing enhancements. Appendix A.

15 On December 3, 2008, the Stated filed an amended information, which added two
16 counts of felony first degree murder, one pertaining to Doria, as count III, and one
17 pertaining to Abrazado as count IV. Appendix B (amended information). It also added
18 firearm sentence enhancements to all counts. Appendix B.

19 Finally, on February 23, 2009, the State filed a second amended information, which
20 amended the firearm sentence enhancements to read "a handgun or a rifle" rather than only
21 "a handgun" as was alleged in the amended information. Appendix C. *Compare* Appendix
22 B.

23 All three informations listed Tyreek Smith, charged in cause number 08-1-00298-7,
24 as Petitioner's co-defendant. Appendix A-C.
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1 On February 26, 2009, after a trial, a jury returned verdicts of guilty as charged.
2 Appendix D-I (verdict forms). It also returned special verdicts finding that the State had
3 proven the existence of all aggravating circumstances alleged in counts I and II of the
4 second amended information beyond a reasonable doubt. Appendix J, K (special verdicts).
5 Finally, the jury returned special verdicts indicating that Petitioner or an accomplice had
6 been armed with a deadly weapon and a firearm at the time of the commission of each of
7 the crimes charged. Appendix L-Q (special verdict forms).

8 On March 27, 2009, the court sentenced Petitioner to life in confinement without
9 the possibility of early release on counts I and II, to 102 months in confinement on count
10 V, and to 75 months in confinement on count VI. Appendix R (warrant of commitment and
11 judgment and sentence). The court did not sentence, reduce to judgment, or so much as
12 mention the felony murder verdicts pertaining to counts III and IV in its judgment and
13 sentence or in any concurrent or subsequent filing. *See, e.g.*, Appendix R.

14 Petitioner and his co-defendant filed a direct appeal in this Court, in which
15 Petitioner argued (1) that the trial court violated his constitutional right to a public trial, by
16 sealing juror questionnaires without first applying the five-factor *Bone-Club*¹ test, (2) that
17 the prosecutor committed misconduct, and (3) that the trial court violated double jeopardy
18 protections “by imposing firearm and deadly weapon enhancemetns for first degree
19 robbery and first degree burglarly, which crimes include weapons as elements.” Appendix
20 S (partially published opinion in *State v. Smith*, 162 Wn. App. 833, 262 P.3d 72 (2011)).

21 On July 26, 2011, this Court filed an opinion which rejected each of these
22 arguments, and affirmed Petitioner’s convictions and sentence. Appendix S.
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¹ *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995).

1 Petitioner filed a petition for discretionary review with the Washington Supreme
2 Court, and, on January 4, 2012, the Supreme Court denied that petition. *State v. Smith*, 173
3 Wn.2d 1007, 271 P.3d 248 (2012)(table).

4 This Court issued its mandate on June 19, 2013. Appendix T. *See* RAP 12.5(b)(3).

5 Just under a year later, on June 3, 2014, Petitioner filed the present personal
6 restraint petition, in which he argues (1) that he was denied effective assistance of trial
7 counsel, (2) that the State committed prosecutorial misconduct, (3) that the trial court erred
8 in instructing the jury, and (4) that his rights against double jeopardy were violated.

9
10 C. ARGUMENT

11 1. PETITIONER FAILED TO MEET HIS BURDEN OF SHOWING
12 PROSECUTORIAL MISCONDUCT BY FAILING TO SHOW
IMPROPER CONDUCT.

13 “Every prosecutor is a quasi-judicial officer of the court, charged with the duty of
14 insuring that an accused receives a fair trial.” *State v. Boehning*, 127 Wn. App. 511, 518,
15 111 P.3d 899, 903 (2005). Prosecutorial misconduct violates this duty and deprives a
16 defendant of his right to a fair trial. *See Boehning*, 127 Wn. App. at 518.

17
18 However, “[w]ithout a proper timely objection at trial, a defendant cannot raise the
19 issue of prosecutorial misconduct on appeal unless the misconduct was so flagrant and ill-
20 intentioned that no curative jury instruction could have corrected the possible prejudice.”
21 *State v. Curtiss*, 161 Wn. App. 673, 250 P.3d 496 (2011); *State v. Larios-Lopez*, 156 Wn.
22 App. 257, 260, 233 P.3d 899 (2010) (citing *State v. Gregory*, 158 Wn.2d 759, 841, 147
23 P.3d 1201 (2006) (quoting *State v. Stenson*, 132 Wn.2d 668, 719, 940 P.2d 1239 (1997),
24 *cert. denied*, 523 U.S. 1008, 118 S. Ct. 1193, 140 L. Ed. 2d 323 (1998))). Thus, “the
25 defendant must show that (1) ‘no curative instruction would have obviated any prejudicial

1 effect on the jury’ and (2) the misconduct resulted in prejudice that ‘had a substantial
2 likelihood of affecting the jury verdict.” *State v. Emery*, 174 Wn.2d 741, 761, 278 P.3d
3 653 (2012)(quoting *State v. Thorgerson*, 172 Wn.2d 438, 455, 258 P.3d 43 (2011)).

4 This is because the absence of an objection “strongly suggests to a court that the
5 argument or event in question did not appear critically prejudicial to an appellant in the
6 context of the trial.” *State v. Swan*, 114 Wn.2d 613, 661, 790 P.2d 610 (1990) (emphasis
7 in original).

8 Even where there was a proper objection, an appellant claiming prosecutorial
9 misconduct “bears the burden of establishing the impropriety of the prosecuting attorney’s
10 comments and their prejudicial effect.” *State v. Anderson*, 153 Wn. App. 417, 427, 220
11 P.3d 1273 (2009). See *State v. Thorgerson*, 172 Wn.2d 438, 442, 258 P.3d 43 (2011);
12 *State v. Fisher*, 165 Wn.2d 727, 746-47, 202 P.3d 937 (2009); *State v. McKenzie*, 157
13 Wn.2d 44, 134 P.3d 221 (2006) (quoting *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d
14 546 (1997)); *Beck v. Washington*, 369 U.S. 541, 557, 82 S. Ct. 955, 8 L. Ed. 2d 834
15 (1962).
16

17 Hence, a reviewing court must first evaluate whether the prosecutor’s comments
18 were improper. *Anderson*, 153 Wn. App. at 427. “The State is generally afforded wide
19 latitude in making arguments to the jury, and prosecutors are allowed to draw reasonable
20 inferences from the evidence.” *Anderson*, 153 Wn. App. at 427-28, 220 P.3d 1273.

21 It is not misconduct for a prosecutor to argue that the evidence does not support a
22 defense theory, *State v. Russell*, 125 Wn.2d 24, 87, 882 P.2d 747 (1994) (citing *State v.*
23 *Graham*, 59 Wn. App. 418, 429, 798 P.2d 314 (1990), *State v. Contreras*, 57 Wn. App.
24 471, 476, 788 P.2d 1114, review denied, 115 Wn.2d 1014, 797 P.2d 514 (1990)), and “the
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1 prosecutor, as an advocate, is entitled to make a fair response to the arguments of defense
2 counsel.” *Russell*, 125 Wn.2d at 87.

3 Moreover, “[r]emarks of the prosecutor, even if they are improper, are not grounds
4 for reversal if they were invited or provoked by defense counsel and are in reply to his or
5 her acts and statements, unless the remarks are not a pertinent reply or are so prejudicial
6 that a curative instruction would be ineffective.” *Id.* at 86.

7 “A prosecutor’s improper comments are prejudicial ‘only where ‘there is a
8 substantial likelihood the misconduct affected the jury’s verdict.’” *State v. Yates*, 161
9 Wn.2d 714, 774, 168 P.3d 359 (2007) (quoting *Brown*, 132 Wn.2d at 561, 940 P.2d 546);
10 *Fisher*, 165 Wn.2d at 747.

11 “A reviewing court does not assess ‘[t]he prejudicial effect of a prosecutor’s
12 improper comments... by looking at the comments in isolation but by placing the remarks
13 ‘in the context of the total argument, the issues in the case, the evidence addressed in the
14 argument, and the instructions given to the jury.’” *Id.* (quoting *Brown*, 132 Wn.2d at 561);
15 *State v. Johnson*, 158 Wn. App. 677, 683, 243 P.3d 936 (2010). “[R]emarks must be read
16 in context.” *State v. Pastrana*, 94 Wn. App. 463, 479, 972 P.2d 557 (1999); *Larios-Lopez*,
17 156 Wn. App. at 261.

19 Prosecutorial misconduct may be neutralized by a curative jury instruction, *Russell*,
20 125 Wn.2d 24, 86, 882 P.2d 747 (1994), and juries are presumed to follow the court’s
21 instructions. *State v. Weber*, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983).

22 In the present case, Petitioner argues that the deputy prosecutor committed
23 misconduct in five ways. PRP, p. 4-10, 21-32. The record shows otherwise.
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1 First, Petitioner seems to argue here as he did in his direct appeal, that the deputy
2 prosecutor improperly vouched for the veracity of witness Spencer by “recounting
3 Spencer’s plea agreement to testify truthfully,” both in the prosecutor’s statement and
4 argument and in his examination of Spencer at trial². Appendix S, p. 14, PRP, p. 21-31.

5 This argument should be rejected here because it was raised and rejected by this
6 Court on Petitioner’s direct appeal. Appendix S.

7 “[A] personal restraint petitioner may not renew an issue that was raised and
8 rejected on direct appeal unless the interests of justice require relitigation of that issue.” *In*
9 *Re Personal Restraint of Lord*, 123 Wn.2d 296, 303, 868 P.2d 835 (1994). *Cf.* RAP
10 16.4(d) (“[n]o more than one petition for similar relief will be entertained without good
11 cause shown.”); *In Re Personal Restraint of Haverty*, 101 Wn.2d 498, 681 P.2d 835
12 (1984).

13
14 In this case, Petitioner argued on direct appeal that “the prosecutor acted with ill-
15 intention in recounting Spencer’s plea agreement to testify truthfully, thereby impliedly
16 assuring Spencer’s validity,” and this Court rejected that claim. Appendix S, p. 14-18
17 (*State v. Smith*, 162 Wn. App. 833, 848-51, 262 P.3d 72 (2011)).

18 Because Petitioner raises the same argument in the present petition, *see* PRP, p. 21-
19 31, he must now show that “the interests of justice require relitigation of this issue.” *Lord*,
20 123 Wn.2d at 303. Petitioner makes no such showing. *See* PRP, p.1-33.

21 Therefore, his claim should be dismissed.

22 Petitioner’s second claim is that the deputy prosecutor engaged in misconduct by
23 employing an improper jigsaw puzzle analogy. PRP, p. 4-9. The record shows otherwise.
24

25 ² Petitioner makes this argument at least indirectly by contending that his trial counsel provided ineffective assistance by failing to object to such statements and examination. *See also* §C(4) *infra*.

1 This Court analyzes “the State’s use of the jigsaw puzzle analogy on a case-by-
2 case basis, considering the context of the argument as a whole.” *State v. Fuller*, 169
3 Wn. App. 797, 825, 282 P.3d 126 (2012).

4 For example, in *State v. Johnson*, 158 Wn. App. 677, 243 P.3d 936 (2010), the
5 State analogized its burden of proof to a partially completed puzzle, arguing, “‘You add
6 a *third piece* of the puzzle, and at this point even *being able to see only half, you can*
7 *be assured beyond a reasonable doubt that this is going to be a picture of Tacoma.*’”
8 *Johnson*, 158 Wn. App. at 682, 243 P.3d 936 (emphasis added). This Court found that
9 this argument “trivialized the State’s burden, [improperly] focused on the degree of
10 certainty the jurors needed to act, and implied that the jury had a duty to convict
11 without a reason not to do so,” and therefore, held it to be improper. *Id.* at 685.

12 However, in *State v. Curtiss*, this Court reached the opposite conclusion.¹⁶¹
13 Wn. App. 673, 250 P.3d 496 (2011). In that case, the deputy prosecutor had argued
14 that:
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16 reasonable doubt is not magic. This is not an impossible standard.
17 imagine, if you will, a giant jigsaw puzzle of the Tacoma Dome. *There*
18 *will come a time when you’re putting that puzzle together, and even with*
19 *pieces missing, you’ll be able to say, with some certainty, beyond a*
20 *reasonable doubt what that puzzle is: The Tacoma Dome.*

21 *Curtiss*, 161 Wn. App. at 700 (emphasis added). This Court held that this argument was
22 not improper because “the State’s comments about *identifying* the puzzle with certainty
23 before it is complete are not analogous to the weighing of competing interests inherent
24 in a choice that individuals make in their everyday lives,” *Curtiss*, 161 Wn. App. at
25 700-01 (emphasis added).

1
2 Likewise, in *State v. Fuller*, this Court held that the State's use of "a puzzle
3 analogy in closing argument" was not improper because unlike in *Johnson*, that
4 analogy "neither equated its burden of proof to making an everyday choice nor
5 quantified the level of certainty necessary to satisfy the beyond a reasonable doubt
6 standard." 169 Wn. App. 797, 827-28, 282 P.3d 126 (2012). It further found that stating
7 that a "jury could be convinced beyond a reasonable doubt even without 100 percent
8 certainty," does "not improperly quantify [the State's] burden." *Fuller*, 169 Wn. App.
9 at 827.

10 In the present case, the deputy prosecutor made the following statements during
11 closing argument:

12
13 Now, you have been given an instruction on "a reasonable
14 doubt." A reasonable doubt is one for which a reason exists and may
15 arise from the evidence or lack of evidence. I would submit to you that a
16 reasonable doubt is very much like a puzzle. Let's say, one day, you are
17 given a puzzle, and someone tells you, hey this is a puzzle of downtown
18 Portland. Someone else says, it's downtown Seattle. Someone else says,
19 no it is downtown Tacoma. You have no idea. You can't be convinced
20 beyond a reasonable doubt that it is any of the three cities.

21 So, you start putting the pieces of the puzzle together. You see a
22 mountain. It kind of looks like Mount Rainier. Maybe it is Mount Hood.
23 You are leaning towards Tacoma or Seattle, but you can't be convinced
24 beyond a reasonable doubt that it is not Portland.

25 Some of the buildings start coming into focus. You still don't
know for sure which it is, but it is starting to look a lot more like
Tacoma or Seattle. You still can't be convinced beyond a reasonable
doubt. You think that you probably know what it is.

*You continue putting the puzzle together, and there comes a
point long before you have all of the pieces, long before every piece is
in place, long before every question and every doubt is answered, and
as long as the right pieces of the puzzle are there, you can be
convinced beyond a reasonable doubt that what you are really looking
at is Seattle with Mount Rainier in the background. And so it is with
this case, from there, you can fill in the rest of the pieces.*

1 You may have a question in the back of your mind as to exactly
2 who it was that plunged the knife over and over and over and over again
3 into Ruben or Warren. In the end, it doesn't matter because you have the
4 right pieces of the puzzle. You have the accomplice liability instruction.
5 The right pieces of the puzzle are there, and the case has been proved
6 beyond a reasonable doubt.

7 Appendix U (Verbatim Report of Proceedings (RP) of closing arguments, RP 1914-16)
8 (emphasis added).

9 Hence, the prosecutor's comments here were much more analogous to those of
10 the prosecutor in *Curtiss* or *Fuller*, and almost identical to the relevant language in
11 *Curtiss*. Here, as in those cases, and unlike in *Johnson*, the deputy prosecutor "neither
12 equated [the State's] burden of proof to making an everyday choice nor quantified the
13 level of certainty necessary to satisfy the beyond a reasonable doubt standard." *Fuller*,
14 169 Wn. App. 797, 827-28, 282 P.3d 126 (2012).

15 As a result, his use of the analogy was not misconduct, and the present petition
16 should be denied.

17 However, even were it assumed *arguendo* that such comments were improper,
18 Petitioner cannot show prejudice because here, as in *Fuller* and *Curtiss*,

19 the State accurately stated that it had to prove every element of the crime
20 charged and further referenced the trial court's actual instruction on beyond a
21 reasonable doubt. The trial court correctly instructed the jury that Fuller "was
22 presumed innocent," that the "State ... ha[d] the burden of proving each element
23 of each crime beyond a reasonable doubt," and that the "lawyers' statements are
24 not evidence."

25 *Fuller*, 169 Wn. App. at 827-28. *See Curtiss*, 161 Wn. App. at 700. *Compare* Appendix
26 U, V (court's instructions to the jury).

1 Thus, there is no "substantial likelihood [that any] misconduct affected the
2 jury's verdict," and, as a result, any "improper comments" could not have been
3 prejudicial. *Yates*, 161 Wn.2d at 774.

4 Therefore, the present petition should be denied.

5 Petitioner's third argument is that the deputy prosecutor committed misconduct
6 by improperly "ask[ing] the jury to reach a verdict that represents the truth," PRP, p. 9,
7 by making the following comments in closing argument:

8 *The right pieces of the puzzle are there, and the case has been*
9 *proved beyond a reasonable doubt.*

10 *Where this leaves you, if you follow the Court's instructions,*
11 *we would urge you to return a verdict in this case that represents the*
12 *truth, that is, a verdict to guilty* of Count I, Aggravated Murder; Count
13 2, Aggravated Murder. We would urge you to return a verdict that
14 represents the truth, and that is a verdict of guilty to Counts 3 and 4,
15 Murder in the First Degree, the Felony Murder, the Felony Murder; and
16 finally, we're urging you to return a verdict of guilty as charged to the
17 Burglary and Robbery as well.

18 Thank you very much.

19 Appendix T (RP 1916) (emphasis added).

20 Because it is not "the jury's job to solve a case," but "to determine whether the
21 State has proved its allegations against a defendant beyond as reasonable doubt," a
22 prosecutor's request that the jury 'declare the truth' is improper." *State v. Evans*, 163
23 Wn. App. 635, 644, 260 P.3d 934 (2011) (quoting *State v. Anderson*, 153 Wn. App.
24 417, 429, 220 P.3d 1273 (2009)).

25 However, the prosecutor in this case made no such request. Rather, after
discussing the evidence in the record extensively, Appendix T (RP 1873-1916), the
prosecutor argued no more than that "the case has been proved beyond a reasonable
doubt" and that "if [the jury] follow[ed] the Court's instructions," it should "return a

1 verdict in this case that represents the truth, that is,” verdicts of guilty as charged.

2 Appendix T (RP 1916). In other words, the deputy prosecutor did not ask the jury to
3 “solve a case” or get to the truth, but to determine that “the State has proved its
4 allegations against a defendant beyond as reasonable doubt.” *Evans*, 163 Wn. App. at
5 644.

6 Therefore, his argument was not improper and the present petition should be
7 denied.

8 Petitioner’s fourth argument is that the deputy prosecutor committed
9 misconduct by making the following comments during rebuttal argument:

10 I would like to start by discussing this topic of reasonable doubt.
11 [Defense Counsel] commented to you that, quote, you know, you all
12 have your doubts, and he argued to you the opposite of a doubt is
13 certainty, according, evidently, to the actress Ms. Streep, although that is
14 nor in your jury instructions, that is not the standard, that the State has to
15 prove a case to certainty, to any mathematical certainty, or 100 percent
16 certainty.

17

18 [Defense Counsel] argued long and hard about certain factual aspects of
19 the case, certain issues that had arisen, and it is contended that we don’t
20 know the answer to that. We have a doubt about some particular fact
21 suggesting to you then by his argument that if you have a doubt about
22 any single fact or some important issue in the case, well, that means an
23 acquittal must follow. That’s not what this legal standard means.

24 *I urge you to pay close attention to the instructions. You have 12 of*
25 *them that start with the words “to convict.” What you are going to say*
for each crime, six crimes charged for each defendant, therefore, 12,
you will see that the Court has told you that to convict the defendants
of the respective crimes that are laid out there, each of the following
elements must be provided beyond a reasonable doubt; therefore, it is
the elements that are at issue. Criminal law is elemental. It’s not a
matter of whether you have questions and unanswered questions and
concerns about some particular underlying fact. The issue is, has the
State proven to you beyond a reasonable doubt that each of these
elements is true?

You can have questions. You are going to have unanswered
questions. It is not legally required – and, in fact, it would be
impossible for the State of Washington to prove a case to perfection, to

1 *mathematical certainty, to answer every question that you have. It is*
2 *not the burden. That would be an impossible burden to carry. Having*
3 *doubts is acceptable. It is understandable. Again, as to what? Let me*
4 *give you an example.*

5 *When Ms. Sabin-Lee testified to you about her uncertainty as*
6 *to the exact words that Defendant Smith used in describing how he*
7 *came into possession of the marijuana, how he hit a lick, how this*
8 *medical marijuana came into his possession, well, you certainly have*
9 *reasonable doubt, if you will, as to exact words that she heard. There*
10 *is no doubt that she was being told by her boyfriend, former boyfriend,*
11 *that he was personally involved in this criminal episode.*

12 *I would like you to try to picture in your mind two sets of*
13 *railroad tracks, four iron rails, if you will, parallel to each other.*
14 *Imagine that the iron rails are the elements of proof as you will find in*
15 *the “to-convict” instructions. Now, underneath the iron rails are the*
16 *numerous ties, the pieces of wood that support the iron rails.*

17 *Well, the rails are, in this analogy, they are the elements of*
18 *proof. The ties are all the myriad of facts supporting issues of*
19 *evidence that you are going to have. All right.*

20 *Now, if you have concerns and issues about some of that*
21 *supporting evidence, it is the equivalent of, if you will, removing one of*
22 *the supporting railroad ties or maybe even several, but the iron rails*
23 *remain. They are still adequate, more than adequately supported, even*
24 *if you have concerns about some of the underlying evidence.*

25 Appendix U (RP 1985-87) (emphasis added). See PRP, p. 6-7, 9.

Petitioner contends that these statements “trivialized the reasonable doubt standard” and improperly implied that a reasonable doubt must be equivalent to a mathematical certainty. PRP, p. 9. They did not.

The deputy prosecutor here was simply responding to defense counsel’s apparent implication that because “the opposite of a doubt is certainty... the State has to prove a case to certainty, to any mathematical certainty, or 100 percent certainty.” Appendix T (RP 1985). Because a “prosecutor, as an advocate, is entitled to make a fair response to the arguments of defense counsel,” *Russell*, 125 Wn.2d at 87, the prosecutor’s response here cannot be considered improper.

1 Moreover, the substance of the prosecutor's comments confirms this. Far from
2 trivializing the reasonable doubt standard or converting the definition of a doubt which is
3 reasonable into one that must be certain, he urged the jury to "pay close attention to the
4 [court's] instructions," Appendix U (RP 1986), which included a proper instruction on
5 proof beyond a reasonable doubt. Appendix V (instruction no. 3).

6 Therefore, the prosecutor did not commit misconduct and the petition should be
7 denied.

8 Petitioner's final argument regarding prosecutorial misconduct is that the deputy
9 prosecutor committed misconduct by making the following statements in rebuttal argument:

10 Ruben and Warren's lives deserve the protection of the law. Any life is
11 precious, beyond measure. The defendants have received the due process
12 of law with all of its protections. They have received a fair trial. Now, it is
13 time for justice to be served for the people of Washington and for Ruben
14 and for Warren. It is time that these defendants be held to account for the
15 heinous crimes that they've committed. It is time for you, as the
16 conscience of the community—

17 [DEFENSE COUNSEL]: Objection.

18 THE COURT: Sustained.

19 [DEPUTY PROSECUTOR]: Member's of the jury, it is time for you, as a jury, to
20 return guilty verdicts as to every charge. Thank you for listening.

21 Appendix U (RP 2000-01); PRP, p. 7, 9-10. Specifically, Petitioner seems to argue that the
22 deputy prosecutor "appealed to the jury's passions and prejudices" by referring to the jury
23 as "the conscience of the community." PRP, p. 9-10.

24 A prosecutor may commit misconduct by asking a jury to return a guilty verdict to
25 send a message to the community or to act as the conscience of the community. *State v.*
Powell, 62 Wn. App. 914, 918-19, 816 P.2d 86 (1991). *See, e.g., State v. Belgarde*, 101
Wn.2d 504, 755 P.2d 174 (1988).

1 However, the prosecutor in this case never asked the jury to return a verdict to act
2 as the conscience of the community. *See* Appendix U (RP 1873-1917, 1984-2001). Rather,
3 he argued that “the case has been proved beyond a reasonable doubt” and that “if [the jury]
4 follow[ed] the Court’s instructions,” it should return verdicts of guilty as charged.
5 Appendix T (RP 1916).

6 Therefore, the deputy prosecutor did not commit misconduct.

7 Because Petitioner has failed to meet his burden of showing prosecutorial
8 misconduct, his petition should be denied.

9 2. THE PRESENT PETITION SHOULD BE DENIED BECAUSE THE
10 TRIAL COURT PROPERLY INSTRUCTED THE JURY.

11 Petitioner seems to make two separate arguments that the trial court erred in
12 instructing the jury.

13 First, he seems to argue that the court should have given a unanimity instruction
14 pursuant to *State v. Petrich*, 101 Wn.2d 566, 569, 683 P.2d 173 (1984), *overruled on other*
15 *grounds by State v. Kitchen*, 110 Wn.2d 403, 405-06, 756 P.2d 105 (1988). PRP, p. 10-15.

16 “In Washington, a defendant may be convicted only when a unanimous jury
17 concludes that the criminal act charged in the information has been committed.” *State v.*
18 *Petrich*, 101 Wn.2d at 569.

19 Thus, “[w]hen the evidence indicates that several distinct criminal acts have been
20 committed, *but defendant is charged with only one count of criminal conduct*, jury
21 unanimity must be protected,” *Petrich*, 101 Wn.2d at 572 (emphasis added), such that the
22 jury must unanimously agree on which incident constituted the crime. *State v. Kitchen*,
23 110 Wn.2d 403, 411, 756 P.2d 105 (1988).
24
25

1 To protect this unanimity in such cases, “[t]he State may, in its discretion, elect the
2 act upon which it will rely for conviction,” or the court must instruct the jury “that all 12
3 jurors must agree that the same underlying criminal act has been proved beyond a
4 reasonable doubt.” *Petrich*, 101 Wn.2d at 572. That is, “either the State must tell the jury
5 which act to rely on in its deliberations or the court must instruct the jury to agree on a
6 specific criminal act.” *Kitchen*, 110 Wn.2d at 409.

7 In the present case, Petitioner seems to argue that because the premeditated and
8 felony murder counts pertaining to each victim were charged in four separate counts rather
9 than as alternatives in two counts, the court should have given a unanimity instruction
10 under *Petrich*. PRP, p. 10-15. The record shows otherwise.

11 Specifically, it shows that, while “several distinct criminal acts [were] committed,”
12 Petitioner was also charged with several distinct crimes rather than only “one count of
13 criminal conduct.” *Petrich*, 101 Wn.2d at 572. Petitioner was charged with the
14 premeditated and felony murder of Doria, and the premeditated and felony murder of
15 Abrazado. Appendix C. These crimes were all defined differently and required different
16 elements to prove. See Appendix . Hence, it would have been legally impossible for the
17 jury to rely on one act to convict Petitioner of more than one crime.

18 Because Petitioner was not “charged with only one count of criminal conduct,”
19 there was no danger of the jury not being unanimous, and no need for a *Petrich* instruction.
20 *Petrich*, 101 Wn.2d at 569. The State was not required to “tell the jury which act to rely on
21 in its deliberations” and the Court was not required to “instruct the jury to agree on a
22 specific criminal act.” *State v. Kitchen*, 110 Wn.2d 403, 409, 756 P.2d 105 (1988).
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1 Therefore, the trial court could not have erred in failing to so instruct the jury, and
2 the present petition should be denied.

3 Petitioner's second argument is that the "to convict instructions for premeditated
4 murder" should have, but "did not include... the aggravating factors" charged in the
5 second amended information. PRP, p. 15-17. However, the law does not require these
6 instructions to include such factors.

7 Generally, a to-convict instruction "must contain all of the elements of the crime
8 because it serves as a yardstick by which the jury measures the evidence to determine guilt
9 or innocence." *State v. Smith*, 131 Wn.2d 258, 263, 930 P.2d 917 (1997).

10 However, aggravating circumstances are not elements of an offense, and "need not
11 be charged in the information." *State v. Siers*, 174 Wn.2d 269, 274 P.3d 358
12 (2012)(quoting the lead opinion in *State v. Powell*, 167 Wn.2d 672, 682, 223 P.3d 493
13 (2009)).

14 Therefore, they need not be included in the to-convict instructions, see *Smith*, 131
15 Wn.2d at 263, and the trial court could not have erred by failing to include them here.

16 Petitioner's claim that the aggravating factors are elements that must be included in
17 the to-convict instructions is precluded by decisions of the Washington State Supreme
18 Court such as *State v. Kincaid*, 103 Wn.2d 304, 692 P.2d 823 (1985).

19 In *Kincaid*, the trial court instructed the jury that if it found the defendant guilty of
20 premeditated first degree murder as set out in the to-convict instruction, it must turn to the
21 special verdict form and determine whether the State proved the aggravating circumstance
22 listed there beyond a reasonable doubt. *Kincaid*, 103 Wn.2d at 311. Kincaid argued that
23 since he was charged with aggravated first degree murder, the aggravating factors were
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1 elements of the crime, and accordingly it was reversible error not to include those factors
2 in the to-convict instruction. *Kincaid*, 103 Wn.2d at 312. However, the Supreme Court
3 disagreed. *Id.* It found that aggravating circumstances “are not elements of a crime but are
4 ‘aggravation of penalty’ provisions which provide for an increased penalty where the
5 circumstances of the crime aggravate the gravity of the offense.” *Kincaid*, 103 Wn.2d at
6 312. Hence, the Court found no error in the jury instructions. *Kincaid*, 103 Wn.2d at 312.

7 Petitioner’s circumstances here are virtually identical to those of *Kincaid*. Petitioner
8 was charged with aggravated first degree murder. Appendix C (counts I & II). The to-
9 convict instructions given to the jury set forth the elements of first degree murder.
10 Appendix V (instructions 15 & 16). The jury was instructed that if it found Petitioner
11 guilty of first degree murder, it must consider the special verdict forms. Appendix V
12 (instruction 36). The jury found Petitioner guilty as charged in the first degree murder
13 counts and indicated on the special verdict forms that the State had proven the charged
14 aggravating circumstances beyond a reasonable doubt. Appendix D, E, J, K.
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16 Thus, the trial court did not err in its to-convict instructions.

17 Neither *Alleyne v. United States*, ___ U.S. ___, 133 S.Ct. 2151, ___ L.Ed.2d ___.
18 (2013), nor *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435
19 (2000), upon which Petitioner relies, change this result.

20 In *Apprendi*, the United States Supreme Court held that “[o]ther than the fact of a
21 prior conviction, any fact that increases the penalty for a crime beyond the prescribed
22 statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”
23 *Apprendi*, 530 U.S. at 490. See also *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153
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1 L.Ed.2d 556 (2002)(holding that “facts which are necessary to impose a greater sentence
2 are ‘ “the functional equivalent of an element of a greater offense.” ’ ”).

3 *Alleyne* relied upon *Apprendi* to hold “that facts that increase mandatory minimum
4 sentence must be submitted to the jury[.]” *Alleyne*, 133 S.Ct. at 2163.

5 Petitioner contends that such cases support his contention that aggravating factors
6 are elements, and hence must be included in to-convict instructions. PRP, p. 16-17. His
7 reliance on these cases is misplaced. Petitioner is correct that *Apprendi* refers to
8 aggravating factors as the functional equivalent of elements, *Apprendi*, 530 U.S. at 494 n.
9 19, but it did so only in the context of explaining why a jury had to find enhancing factors
10 beyond a reasonable doubt. Neither *Apprendi* nor *Alleyne* held that aggravating factors *are*
11 elements of a crime or that they must be included in to-convict instructions.

12 Even if they had, the Washington State Supreme Court has found that “the federal
13 indictment requirements relating to aggravating circumstances do not ‘extend to local
14 prosecutions under Washington law when aggravating circumstances are alleged,’” *Siers*,
15 174 Wn.2d at 278-79 (quoting *Powell*, 167 Wash.2d at 684, 223 P.3d 493).

16 In this case, the jury explicitly found that the State had proven the aggravating
17 factors alleged beyond a reasonable doubt. Appendix J, K. Thus, the trial court could not
18 have offended the principles of *Apprendi* and *Alleyne* by deciding them itself. Nor, as
19 shown above, did it err by not including reference to them in the to-convict instructions.
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21 *Siers*, 174 Wn.2d 269; *Smith*, 131 Wn.2d at 263.

22 Therefore, the trial court did not err in instructing the jury, and the present petition
23 should be denied.
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1 3. PETITIONER'S CONVICTIONS OF FIRST DEGREE BURGLARY,
2 FIRST DEGREE ROBBERY, THE IMPOSITION OF DEADLY
3 WEAPON AND FIREARM ENHANCEMENTS FOR THOSE
4 COUNTS, AND HIS VERDICTS OF GUILTY OF FIRST DEGREE
5 MURDER WERE CONSISTENT WITH DOUBLE JEOPARDY
6 PROTECTIONS.

7 "Double jeopardy claims are questions of law that are reviewed de novo." *State*
8 *v. Kelley*, 168 Wn.2d 72, 76, 226 P.3d 773 (2010) (citing *State v. Hughes*, 166 Wn.2d
9 675, 681, 212 P.3d 558 (2009)). See, e.g., *State v. Martin*, 149 Wn. App. 689, 693, 205
10 P.3d 931 (2009).

11 However, "[a] personal restraint petitioner has the burden of proving
12 constitutional error that results in actual prejudice or nonconstitutional error that results
13 in a miscarriage of justice." *In Re Personal Restraint of Waggy*, 111 Wn. App. 511,
14 518, 45 P.3d 1103 (2002) (citing *In re Personal Restraint of Cook*, 114 Wn.2d 802,
15 813, 792 P.2d 506 (1990)); *In Re Personal Restraint of Brett*, 142 Wn.2d 868, 874, 16
16 P.3d 601 (2001).

17 "If a petition is based on matters outside the appellate record, a petitioner must
18 show that he has 'competent, admissible evidence' to support his arguments." *Waggy*,
19 111 Wn. App. at 518 (quoting *In re Personal Restraint of Rice*, 118 Wn.2d 876, 886,
20 828 P.2d 1086, cert. denied, 506 U.S. 958, 113 S. Ct. 421, 121 L. Ed. 2d 344 (1992)).
21 "[A] petitioner must show that more likely than not he was prejudiced by the error."
22 *Waggy*, 111 Wn. App. at 518. "Bare allegations unsupported by citation of authority,
23 references to the record, or persuasive reasoning cannot sustain this burden or proof."
24 *Waggy*, 111 Wn. App. at 518-19 (quoting *State v. Brune*, 45 Wn. App. 354, 363, 725
25 P.2d 454 (1986), review denied, 110 Wn.2d 1002 (1988)). "A petition that fails to meet

1 this basic level of proof and argument may be dismissed summarily.” *Waggy*, 111 Wn.
2 App. at 519.

3 The double jeopardy clause of the Fifth Amendment to the United States
4 Constitution provides that no person shall “be subject for the same offense to be twice
5 put in jeopardy of life or limb.” U.S. Const. Amend. V. It applies to the states through
6 the due process clause of the Fourteenth Amendment. *State v. Wright*, 165 Wn.2d 783,
7 801, 203 P.3d 1027 (2009) (citing *Benton v. Maryland*, 395 U.S. 784, 794, 89 S. Ct.
8 2056, 23 L. Ed. 2d 707 (1969)).

9 The Washington State Constitution similarly mandates that no person shall “be
10 twice put in jeopardy for the same offense.” Wn. Const. Art. I, Sec. 9.

11 “Washington’s double jeopardy clause is coextensive with the federal double
12 jeopardy clause and ‘is given the same interpretation the [United States] Supreme Court
13 gives to the Fifth Amendment.’” *State v. Turner*, 169 Wn.2d 448, 454, 238 P.3d 461
14 (2010); *State v. Adel*, 136 Wn.2d 629, 632, 632, 965 P.2d 1072 (1998) (citing *State v.*
15 *Gocken*, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995)).

17 Both clauses have been interpreted to protect against the same triumvirate
18 of constitutional evils: “being (1) prosecuted a second time for the same
19 offense after acquittal, (2) prosecuted a second time for the same offense
after conviction, and (3) *punished multiple times for the same offense*.”

20 *Turner*, 169 Wn.2d at 454 (emphasis added). See *Whalen v. United States*, 445 U.S.
21 684, 688, 100 S. Ct. 1432, 1436, 63 L. Ed. 2d 715 (1980).

22 However,

23 [a] legislature can enact statutes imposing, in a single proceeding,
24 cumulative punishments for the same conduct. “With respect to cumulative
25 sentences imposed in a single trial, the Double Jeopardy Clause does no
more than prevent the sentencing court from prescribing greater punishment

1 than the legislature intended.” *Missouri v. Hunter*, 459 U.S. 359, 366, 103
2 S.Ct. 673, 74 L.Ed.2d 535 (1983). *If the legislature intends to impose*
3 *multiple punishments, their imposition does not violate the double*
4 *jeopardy clause. Id.* at 368.

5 *State v. Kelley*, 168 Wn.2d 72, 77, 226 P.3d 773 (2010) (emphasis added). *See State v.*
6 *Calle*, 125 Wn.2d 769, 776, 888 P.2d 155 (1995) (citing *Whalen v. United States*, 445
7 U.S. 684, 688, 100 S.Ct. 1432, 1436, 63 L.Ed.2d 715 (1980)). Thus, “[i]f there is clear
8 legislative intent to impose multiple punishments for the same act or conduct, this is the
9 end of the inquiry and no double jeopardy violation exists.” *Kelley*, 168 Wn.2d at 77.

10 Only “[i]f such clear intent is absent,” does “the court applie[] the *Blockburger*
11 [v. *United States*, 284 U.S. 299, 52 S.Ct. 180 (1932)] ‘same evidence’ test to determine
12 whether the crimes are the same in fact and law.” *Id.* (citing *State v. Calle*, 125
13 Wash.2d 768, 777–78, 888 P.2d 155 (1995)).

14 Under this test, “where the same act or transaction constitutes a violation of
15 two distinct statutory provisions, the test to be applied to determine whether
16 there are two offenses or only one, is whether each provision requires proof
17 of a fact which the other does not.” *Id.* If application of the *Blockburger*
18 test results in a determination that there is only one offense, then imposing
19 two punishments is a double jeopardy violation.

20 *Id.* at 77. However, “if each offense, as charged, includes elements not included in the
21 other, the offenses are different and multiple convictions can stand.” *State v. Calle*, 125
22 Wn.2d 769, 777, 888 P.2d 155 (1995).

23 “The appropriate remedy for a double jeopardy violation is vacating the
24 offending conviction.” *Francis*, 170 Wn.2d at 531-32; *Knight*, 162 Wn.2d at 812.

25 In the present case, Petitioner argues that (1) his conviction of first degree
burglary, (2) his conviction of first degree robbery, (3) the imposition of deadly weapon

1 and firearm sentence enhancements pertaining to those counts, and (4) his verdicts of
2 guilty of first degree felony, presumably in addition to his convictions for aggravated
3 murder of the same victims, violate double jeopardy protections. PRP, p. 17-20. The
4 record and law show otherwise.

5 With respect to Petitioner's convictions for first degree burglary, first degree
6 robbery, and first degree murder, "there is clear legislative intent to impose multiple
7 punishments for the same act or conduct," *Kelley*, 168 Wn.2d at 77, through all of these
8 convictions.

9 Specifically, the legislature has enacted an antimerger statute allowing courts to
10 enter separate convictions for burglary as well as all other crimes committed in the
11 course of that burglary. RCW 9A.52.050. That statute provides that "[e]very person
12 who, in the commission of a burglary shall commit any other crime, may be punished
13 therefor as well as for the burglary, and may be prosecuted for each crime separately."
14 RCW 9A.52.050.
15

16 In the present case, the first degree robbery and first degree murders of which
17 Petitioner was convicted, were committed during his "commission of [the] burglary" of
18 which he was convicted. *See* Appendix C.

19 Therefore, Petitioner's convictions for first degree burglary, first degree
20 robbery, and first degree murder do not violate double jeopardy protections.

21 Nor do the verdicts of guilty to the felony murders in counts III and IV, even
22 when considered in conjunction with his judgment and sentence for the aggravated
23 murders of counts I and II.
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1 “[A] defendant convicted of alternative charges may be judged and sentenced on
2 one only.” *State v. Trujillo*, 112 Wn. App. 390, 411, 49 P.3d 935 (2002) (citing *State v.*
3 *Gohl*, 109 Wn. App. 817, 824, 37 P.3d 293 (2001)). Thus, “[a] court may violate double
4 jeopardy either by reducing to judgment both the greater and the lesser of two convictions
5 for the same offense or by conditionally vacating the lesser conviction while directing, in
6 some form or another, that the conviction nonetheless remains valid.” *State v. Turner*, 169
7 Wn.2d 448, 238 P.3d 461 (2010).

8 As a result, “when faced with multiple convictions for the same conduct, courts
9 ‘should enter a judgment on the greater offense only and sentence the defendant on that
10 charge without reference to the verdict on the lesser offense.” *Id.* (quoting *Trujillo*, 112
11 Wn. App. at 411); *State v. Womac*, 160 Wn.2d 643, 660, 160 P.3d 40 (2007). *See State v.*
12 *Ward*, 125 Wn. App. 138, 104 P.3d 61 (2005) (finding that there was no double jeopardy
13 violation where the trial court entered judgment and sentenced the defendant on only the
14 second-degree murder despite receiving verdicts of guilty to both second-degree murder
15 and manslaughter).

16 Double jeopardy protections do not require permanent, unconditional vacation of
17 the verdict pertaining to the lesser offense, but that verdict cannot be conditionally vacated.
18 *Turner*, 169 Wn.2d 448, 238 P.3d 461 (2010). That is, “a judgment and sentence must not
19 include any reference to the vacated conviction –nor may an order appended thereto
20 include such a reference; similarly, no reference should be made to the vacated conviction
21 at sentencing.” *Turner*, 169 Wn.2d 448, 238 P.3d 461 (2010).

22 In the present case, the jury returned verdicts of guilty to both the premediated first-
23 degree murders charged in counts I and II, and the felony murders charged in counts III
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1 and IV. Appendix D-G. The trial court, however, did not reduce the felony murder verdicts
2 to judgment, did not sentence Petitioner for those verdicts, and, indeed, did not include any
3 reference to or information about them in Petitioner's judgment and sentence. Appendix
4 R.

5 Because the court did not reduce "to judgment both the greater and the lesser of
6 two convictions for the same offense" or "conditionally vacat[e] the lesser conviction
7 while directing, in some form or another, that the conviction nonetheless remains valid,"
8 **Turner**, 169 Wn.2d 448, 238 P.3d 461 (2010), it did not violate Petitioner's double
9 jeopardy protections.

10 Finally, Petitioner's argument that the court's imposition of deadly weapon and
11 firearm sentence enhancements for both his first degree burglary and first degree robbery
12 counts violates double jeopardy protections fails for at least two reasons.

13 First, the issue was raised and rejected by this Court on Petitioner's direct appeal.
14 Appendix S.

15 "[A] personal restraint petitioner may not renew an issue that was raised and
16 rejected on direct appeal unless the interests of justice require relitigation of that issue." In
17 **Re Personal Restraint of Lord**, 123 Wn.2d 296, 303, 868 P.2d 835 (1994).

18 In this case, Petitioner argued on direct appeal "that the trial court's imposition of
19 firearm and deadly weapon sentence enhancements for [his] first degree burglary [and first
20 degree robbery] convictions violated constitutional prohibitions against double jeopardy,"
21 and this Court rejected that claim based on **State v. Kelley**, 168 Wn.2d 72, 82, 226 P.3d
22 773 (2010). Appendix S.
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1 Because Petitioner raises the same argument in the present petition, *see* PRP, p. 17-
2 20, he must now show that “the interests of justice require relitigation of this issue.” *Lord*,
3 123 Wn.2d at 303. Petitioner fails to carry this burden. In fact, he makes no allegation or
4 showing “that the ends of justice require[] relitigation of this issue.” *See* PRP.

5 Therefore, under *Lord*, 123 Wn.2d at 303, Petitioner’s claim should be dismissed.

6 Second, even were the claim not dismissed, it should be denied.

7 Petitioner seems to argue that the imposition of deadly weapon and firearm
8 sentence enhancements, along with the sentences for first degree burglary and first degree
9 robbery, violate double jeopardy, presumably because an element of these two offenses
10 was that Petitioner or an accomplice was armed with a deadly weapon or firearm at the
11 time of their commission. PRP, p. 17. *See* Appendix S (instructions 31 & 33).

12 However, as this Court found in its first opinion, Appendix S, the Washington State
13 Supreme Court has already rejected this argument by holding that “imposition of a firearm
14 enhancement does not violate double jeopardy when an element of the underlying offense
15 is use of a firearm.” *State v. Kelley*, 168 Wn.2d 72, 84, 226 P.3d 773 (2010).

16 Therefore, Petitioner’s convictions of first degree burglary and first degree robbery,
17 the imposition of deadly weapon and firearm sentence enhancements for those counts, and
18 the verdicts of guilty of first degree murder were consistent with double jeopardy
19 protections, and the present petition should be denied.
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1 4. PETITIONER HAS FAILED TO SHOW INEFFECTIVE
2 ASSISTANCE OF COUNSEL BECAUSE HE HAS FAILED TO
3 SHOW THAT HIS COUNSEL’S PERFORMANCE WAS
4 DEFICIENT.

5 “Effective assistance of counsel is guaranteed by both the United States
6 Constitution amendment VI and Washington Constitution article I, section 22 (amendment
7 X).” *State v. Yarbrough*, 151 Wn. App. 66, 89, 210 P.3d 1029, 1040-41 (2009). *See In Re*
8 *Elmore*, 162 Wn.2d 236, 251, 172 P.3d 335 (2007); *State v. Johnston*, 143 Wn. App. 1,
9 177 P.3d 1127 (2007). A claim of ineffective assistance of counsel is reviewed de novo.
10 *Yarbrough*, 151 Wn. App. at 89.

11 “Washington has adopted the *Strickland* test to determine whether a defendant had
12 constitutionally sufficient representation.” *State v. Cienfuegos*, 144 Wn.2d 222, 25 P.3d
13 1011 (2001) (citing *State v. Bowerman*, 115 Wn.2d 794, 808, 802 P.2d 116 (1990)); *State*
14 *v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987). That test requires that the defendant
15 meet both prongs of a two-prong test. *Strickland v. Washington*, 466 U.S. 668, 687, 104
16 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). *See also State v. McFarland*, 127 Wn.2d 322, 334-
17 35, 899 P.2d 1251 (1995). “First, the defendant must show that counsel’s performance
18 was deficient” and “[s]econd, the defendant must show that the deficient performance
19 prejudiced the defense.” *Strickland*, 466 U.S. at 687; *Cienfuegos*, 144 Wn.2d at 226-27.
20 A reviewing court is not required to address both prongs of the test if the defendant makes
21 an insufficient showing on either prong. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917
22 P.2d 563, 571 (1996); *In Re Rice*, 118 Wn.2d 876, 889, 828 P.2d 1086 (1992); *State v.*
23 *Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). “A failure to establish either
24 element of the test defeats an ineffective assistance of counsel claim.” *Riofta v. State*, 134
25 Wn. App. 669, 693, 142 P.3d 193 (2006).

1 The first prong “requires showing that counsel made errors so serious that counsel
2 was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.”
3 *Strickland*, 466 U.S. at 687. Specifically, “[t]o establish deficient performance, the
4 defendant must show that trial counsel’s performance fell below an objective standard of
5 reasonableness.” *Johnston*, 143 Wn. App. at 16. “The reasonableness of trial counsel’s
6 performance is reviewed in light of all the circumstances of the case at the time of
7 counsel’s conduct.” *Id.*; *State v. Garrett*, 124 Wn.2d 504, 518, 881 P.2d 185 (1994).
8 “Competency of counsel is determined based upon the entire record below.” *State v.*
9 *Townsend*, 142 Wn.2d 838, 15 P.3d 145 (2001) (citing *State v. McFarland*, 127 Wn.2d
10 322, 335, 899 P.2d 1251 (1995); *State v. Gilmore*, 76 Wn.2d 293, 456 P.2d 344 (1969).

11 “To prevail on a claim of ineffective assistance of counsel, the defendant must
12 overcome a strong presumption that defense counsel was effective.” *Yarbrough*, 151 Wn.
13 App. at 90. This presumption includes a strong presumption “that counsel’s conduct
14 constituted sound trial strategy.” *Rice*, 118 Wn.2d at 888-89. “[W]hen counsel’s conduct
15 can be categorized as legitimate trial strategy or tactics, performance is not deficient.”
16 *State v. Carson*, 179 Wn. App. 961, 976, 320 P.3d 185 (2014) (quoting *State v. Kylo*, 166
17 Wn.2d 856, 863, 215 P.3d 177 (2009)). See *Yarbrough*, 151 Wn. App. at 90 (citing *State*
18 *v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002), *State v. Adams*, 91 Wn.2d 86, 90,
19 586 P.2d 1168 (1978)).

20
21 An ineffective assistance of counsel claim must not be allowed to “function as a
22 way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so
23 the *Strickland* standard must be applied with scrupulous care, lest ‘intrusive post-trial
24 inquiry’ threaten the integrity of the very adversary process the right to counsel is meant to
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1 serve.” *Harrington v. Richter*, 131 S. Ct. 770, 778, 178 L. Ed. 2d 624 (2011). “It is ‘all
2 too tempting’ to ‘second-guess counsel’s assistance after conviction or adverse sentence.’”
3 *Id.* (quoting *Strickland*, 466 U.S. at 689). “The question is whether an attorney’s
4 representation amounted to incompetence under ‘prevailing professional norms,’ not
5 whether it deviated from best practices or most common custom.” *Id.* (quoting *Strickland*,
6 466 U.S. at 690).

7 This Court “defer[s] to an attorney’s strategic decisions to pursue, or to forego,
8 particular lines of defense when those strategic decisions are reasonable given the totality
9 of the circumstances.” *Riofta*, 134 Wn. App. at 693. “If reasonable under the
10 circumstances, trial counsel need not investigate lines of defense that he has chosen not to
11 employ.” *Id.*

12 With respect to the second prong, a “defendant must affirmatively prove prejudice,
13 not simply show that “the errors had some conceivable effect on the outcome.” *State v.*
14 *Crawford*, 159 Wn.2d 147, 99, 147 P.3d 1288 (2006). “In doing so, ‘[t]he defendant must
15 show that there is a reasonable probability that, but for counsel’s unprofessional errors, the
16 result of the proceeding would have been different.’” *Crawford*, 159 Wn.2d at 99-100
17 (quoting *Strickland*, 466 U.S. at 694). ““A reasonable probability is a probability sufficient
18 to undermine confidence in the outcome.”” *Id.* (quoting *Strickland*, 466 U.S. at 694);
19 *Cienfuegos*, 144 Wn.2d at 229.

20 In the present case, Petitioner argues that his counsel’s performance was deficient
21 in three areas, all relating to a failure to object to what he alleges was prosecutorial
22 misconduct.
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1 First, Petitioner argues that his trial counsel was ineffective in failing to object to
2 what Petitioner argued in his direct appeal was the deputy prosecutor's improper vouching
3 for the veracity of witness Spencer. Appendix S, p. 14, PRP, p. 21-31.

4 Trial counsel's "decision of when and whether to object is a classic example of trial
5 tactics" and "[o]nly in egregious circumstances" relating to evidence "central to the State's
6 case, will the failure to object constitute incompetent representation that justifies reversal."
7 *State v. Madison*, 53 Wn. App. 754, 763, 770 P.2d 662 (1989) (citing *Strickland v.*
8 *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L .Ed. 2d 674 (1984), and *State v. Ermert*,
9 94 Wn.2d 839, 621 P.2d 121 (1980)). To prevail on a claim of ineffective assistance of
10 counsel based on a failure to object to or otherwise "challenge the admission of evidence,
11 the defendant must show (1) "the absence of legitimate strategic or tactical reasons
12 supporting the challenged conduct," (2) "*that an objection to the evidence would likely*
13 *have been sustained*, and (3) that the result of the trial would have been different had the
14 evidence not been admitted." *State v. Saunders*, 91 Wn. App. 575, 578, 958 P.2d 364
15 (1998) (emphasis added).

16 In this case, Petitioner cannot show that an objection "would likely have been
17 sustained by the trial court." *Saunders*, 91 Wn. App. at 578.

18 This Court already held, on Petitioner's direct appeal, that "[b]ecause [Petitioner]
19 clearly announced at the trial's outset his intent to attack Spencer's credibility based on his
20 plea bargain with the State, the State was entitled to engage in anticipatory rehabilitation of
21 this witness by eliciting and discussing "Spencer's testimony about his plea-agreement
22 promise to testify truthfully." *Spencer*, 162 Wn. App. 833, 848-49, 262 P.3d 72 (2011);
23 Appendix S, p. 15-18.
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1 Therefore, any objection by Petitioner's trial counsel would not "likely have been
2 sustained by the trial court," and Petitioner cannot show ineffective assistance of counsel
3 for failing to so object.

4 Second, Petitioner argues that his trial counsel's performance was deficient for
5 "failure to object to all prosecutorial misconduct." PRP, p. 31.

6 However, as demonstrated above, *see* § C(1), *supra*, because there was no
7 prosecutorial misconduct, Petitioner cannot show that an objection to alleged misconduct
8 "would likely have been sustained by the trial court." *Saunders*, 91 Wn. App. at 578.

9 Therefore, Petitioner cannot show ineffective assistance of counsel for failing to so
10 object, and his petition should be denied.

11 Finally, Petitioner argues that his trial counsel's performance was deficient for
12 failing to object to the court's instructions to the jury or to seek other instructions.

13 However, as demonstrated above, *see* § C(2), *supra*, because the trial court
14 properly instructed the jury, Petitioner cannot show that an objection to those instructions
15 "would likely have been sustained by the trial court," *Saunders*, 91 Wn. App. at 578, or
16 other instructions adopted by the court.

17 Therefore, Petitioner cannot show ineffective assistance of counsel for failing to so
18 object, and his petition should be denied.

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21 D. CONCLUSION:

22 Petitioner failed to meet his burden of showing prosecutorial misconduct by failing
23 to show improper conduct.

24 Petitioner failed to show that the trial court improperly instructed the jury.
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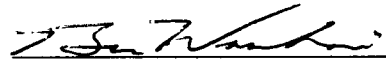
1 Petitioner's convictions of first degree burglary, first degree robbery, and first
2 degree murder with the finding of an aggravating circumstance were consistent with
3 double jeopardy protections.

4 Finally, Petitioner failed to show ineffective assistance of counsel because he failed
5 to show that his trial counsel's performance was deficient.

6 Therefore, the present petition should be denied

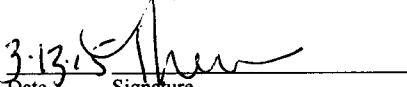
7 DATED: March 13, 2015.

8 MARK LINDQUIST
9 Pierce County
10 Prosecuting Attorney

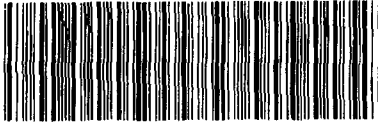
11 
12 BRIAN WASANKARI
13 Deputy Prosecuting Attorney
14 WSB # 28945

15 Certificate of Service:

16 The undersigned certifies that on this day she delivered by U.S. mail or
17 ABC-LMI delivery to the petitioner true and correct copies of the document to
18 which this certificate is attached. This statement is certified to be true and
19 correct under penalty of perjury of the laws of the State of Washington. Signed
20 at Tacoma, Washington, on the date below.

21 
22 Date Signature

APPENDIX A



08-1-00299-5 29007002 INF 01-17-08

FILED
IN COUNTY CLERK'S OFFICE

A.M. JAN 16 2008 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY [Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON,

INFORMATION

Defendant.

010 34837

DOB: 7/3/1986

SEX : MALE

RACE: BLACK

PCN#:

SID#: UNKNOWN

DOL#: UNKNOWN

CO-DEF: TYREEK DEANTHONY SMITH 08-1-00298-7

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of AGGRAVATED MURDER IN THE FIRST DEGREE, committed as follows:

That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cut or stab Ruben Doria, thereby causing the death of Ruben Doria, a human being, who died on or about the 22nd day of September, 2007, and that further aggravated circumstances exist, to-wit: that the defendant or an accomplice committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, and/or that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant, and/or the murder was committed in the course of, in furtherance of, or in immediate flight from the crime of Robbery in the First or Second Degree, or Burglary in the First Degree, contrary to RCW 10.95.020(9) and 10.95.020(10) and 10.95.020(11) and 9A.32.030(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW

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Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional
2 time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.533, and against the peace and
3 dignity of the State of Washington.

4 COUNT II

5 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
6 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
7 AGGRAVATED MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a
8 crime based on the same conduct or on a series of acts connected together or constituting parts of a single
9 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
10 difficult to separate proof of one charge from proof of the others, committed as follows:

11 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
12 on or about the 22nd day of September, 2007, did unlawfully and feloniously, with premeditated intent to
13 cause the death of another person, cut or stab Abraham Abrazado, thereby causing the death of Abraham
14 Abrazado, a human being, who died on or about the 22nd day of September, 2007, and that further
15 aggravated circumstances exist, to-wit: that the defendant or an accomplice committed the murder to
16 conceal the commission of a crime or to protect or conceal the identity of any person committing a crime,
17 and/or that there was more than one victim and the murders were part of a common scheme or plan or the
18 result of a single act of the defendant, and/or that the murder was committed in the course of, in
19 furtherance of, or in immediate flight from the crime of Robbery in the First or Second Degree, or
20 Burglary in the First Degree, contrary to RCW 10.95.020(9) and 10.95.020(10) and 10.95.020(11) and
21 9A.32.030(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly
22 weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as
23 defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and
24 adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.533, and
against the peace and dignity of the State of Washington.

18 COUNT III

19 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
20 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
21 ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on
22 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
proof of one charge from proof of the others, committed as follows:

23 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
24 on or about the 22nd day of September, 2007, did unlawfully and feloniously take personal property
belonging to another with intent to steal from the person or in the presence of Ruben Doria, the owner

INFORMATION- 2

thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to Ruben Doria, said force or fear being used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the Defendant or an accomplice was armed with a deadly weapon, to-wit: a knife or other cutting instrument, contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.533, and against the peace and dignity of the State of Washington.

COUNT IV

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of BURGLARY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:


That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously, with intent to commit a crime against a person or property therein, enter or remain unlawfully in a building, located at 9315 South Ash Street, Apt. C, Tacoma, and in entering or while in such building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a knife or other cutting instrument, a deadly weapon, contrary to RCW 9A.52.020(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.533, and against the peace and dignity of the State of Washington.

DATED this 16th day of January, 2008.

TACOMA POLICE DEPARTMENT
WA02703

GERALD A. HORNE
Pierce County Prosecuting Attorney

By:


EDMUND M. MURPHY
Deputy Prosecuting Attorney
LWS # : 14754

INFORMATION- 3

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930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: 1464913F-F20F-6452-D8EEBD42603E304E**.

This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX B

Case Number: 08-1-00299-5 Date: March 13, 2015

ID: 1464B89D-110A-9BE2-A952FF88CF1BB22C

By: Kevin Stock Pierce County Clerk, Washington

08-1-00299-5 31029571 AMINF 12-04-08

FILED
DEPT. 4
IN OPEN COURT

DEC 3 - 2008

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON,

AMENDED INFORMATION

Defendant.

DOB: 7/3/1986
PCN#: 539347438SEX : MALE
SID#: UNKNOWNRACE: BLACK
DOL#: UNKNOWN

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of AGGRAVATED MURDER IN THE FIRST DEGREE, committed as follows:

That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cut or stab Ruben Doria, thereby causing the death of Ruben Doria, a human being, who died on or about the 22nd day of September, 2007, and that further aggravated circumstances exist, to-wit: that the defendant or an accomplice committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, and/or that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant, and/or that the murder was committed in the course of, in furtherance of, or in immediate flight from the crime of Robbery in the First Degree or Burglary in the First Degree, contrary to RCW 10.95.020(10) and 10.95.020(11) and 10.95.020(9) and 9A.32.030(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or

AMENDED INFORMATION- 1

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1 an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm as defined in RCW
2 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the
3 presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the
4 State of Washington.

5 COUNT II

6 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
7 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
8 AGGRAVATED MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a
9 crime based on the same conduct or on a series of acts connected together or constituting parts of a single
10 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
11 difficult to separate proof of one charge from proof of the others, committed as follows:

12 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
13 on or about the 22nd day of September, 2007, did unlawfully and feloniously, with premeditated intent to
14 cause the death of another person, cut or stab Abraham Abrazado, thereby causing the death of Abraham
15 Abrazado, a human being, who died on or about the 22nd day of September, 2007, and that further
16 aggravated circumstances exist, to-wit: that the defendant or an accomplice committed the murder to
17 conceal the commission of a crime or to protect or conceal the identity of any person committing a crime,
18 and/or that there was more than one victim and the murders were part of a common scheme or plan or the
19 result of a single act of the defendant, and/or that the murder was committed in the course of, in
20 furtherance of, or in immediate flight from the crime of Robbery in the First Degree or Burglary in the
21 First Degree, contrary to RCW 10.95.020(10) and 10.95.020(11) and 10.95.020(9) and 9A.32.030(1)(a),
22 and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other
23 than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW
24 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional
time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission
thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm
as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding
additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the
peace and dignity of the State of Washington.

21 COUNT III

22 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
23 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
24 MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on
the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

AMENDED INFORMATION- 2

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464B89D-110A-9BE2-A952FF88CF1BB22C

Certified By: Kevin Stock Pierce County Clerk, Washington

1 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
2 proof of one charge from proof of the others, committed as follows:

3 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
4 on or about the 22nd day of September, 2007, did unlawfully and feloniously, while committing or
5 attempting to commit the crime of Robbery in the First Degree or Burglary in the First Degree, and in the
6 course of or in furtherance of said crime or in immediate flight therefrom, cut or stab Ruben Doria, and
7 thereby causing the death of Ruben Doria, a human being, not a participant in such crime, on or about the
8 22nd day of September, 2007, contrary to RCW 9A.32.030(1)(c), and in the commission thereof the
9 defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or
10 other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and
11 invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive
12 sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or
13 an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm as defined in RCW
14 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the
15 presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the
16 State of Washington.

12 COUNT IV

13 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
14 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
15 MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on
16 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
17 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
18 proof of one charge from proof of the others, committed as follows:

19 That DARRELL KANTREAL JACKSON, in the State of Washington, on or about the 22nd day
20 of September, 2007, did unlawfully and feloniously, while committing or attempting to commit the crime
21 of Robbery in the First Degree or Burglary in the First Degree, and in the course of or in furtherance of
22 said crime or in immediate flight therefrom, cut or stab Abraham Abrazado, and thereby causing the death
23 of Abraham Abrazado, a human being, not a participant in such crime, on or about the 22nd day of
24 September, 2007, contrary to RCW 9A.32.030(1)(c), and in the commission thereof the defendant, or an
25 accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting
26 instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the
27 provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as
28 provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or an
29 accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm as defined in RCW
30 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the

AMENDED INFORMATION- 3

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Main Office (253) 798-7400

1 presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the
2 State of Washington.

COUNT V

3 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
4 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
5 ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on
6 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
proof of one charge from proof of the others, committed as follows:

7 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
8 on or about the 22nd day of September, 2007, did unlawfully and feloniously take personal property
9 belonging to another with intent to steal from the person or in the presence of Ruben Doria, the owner
thereof or a person having dominion and control over said property, against such person's will by use or
10 threatened use of immediate force, violence, or fear of injury to Ruben Doria, said force or fear being
used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, and
11 in the commission thereof, or in immediate flight therefrom, the Defendant or an accomplice was armed
12 with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly
weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW
13 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW
14 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or an accomplice, was armed with
15 a firearm, to-wit: a handgun, that being a firearm as defined in RCW 9.41.010, and invoking the
provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as
16 provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

COUNT VI

17 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
18 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
19 BURGLARY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based
on the same conduct or on a series of acts connected together or constituting parts of a single scheme or
20 plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to
21 separate proof of one charge from proof of the others, committed as follows:

22 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
on or about the 22nd day of September, 2007, did unlawfully and feloniously, with intent to commit a
23 crime against a person or property therein, enter or remain unlawfully in a building, located at 9315 South
Ash Street, Apt. C, and in entering or while in such building or in immediate flight therefrom, the
24 defendant or another participant in the crime was armed with a deadly weapon, other than a firearm to-

AMENDED INFORMATION- 4

Case Number: 08-1-00299-5 Date: March 13, 2015

08-1-00299-5

SerialID: 1464B89D-110A-9BE2-A952FF88CF1BB22C

Certified By: Kevin Stock Pierce County Clerk, Washington

1 wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW
2 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional
3 time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission
4 thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm
5 as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding
6 additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the
7 peace and dignity of the State of Washington.

8 DATED this 3rd day of December, 2008.

9 TACOMA POLICE DEPARTMENT
10 WA02703

GERALD A. HORNE
Pierce County Prosecuting Attorney

11 mrp

By: 

GERALD T. COSTELLO
Deputy Prosecuting Attorney
WSB#: 15738

22 AMENDED INFORMATION- 5

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

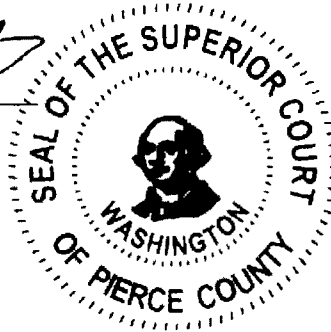
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter SerialID: 1464B89D-110A-9BE2-A952FF88CF1BB22C.

This document contains 5 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.



08-1-00299-5 29007002 INF 01-17-08

FILED
IN COUNTY CLERK'S OFFICE

A.M. JAN 16 2008 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY: [Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON,

INFORMATION

Defendant.

010 34837

DOB: 7/3/1986

SEX : MALE

RACE: BLACK

PCN#:

SID#: UNKNOWN

DOL#: UNKNOWN

CO-DEF: TYREEK DEANTHONY SMITH 08-1-00298-7

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of AGGRAVATED MURDER IN THE FIRST DEGREE, committed as follows:

That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cut or stab Ruben Doria, thereby causing the death of Ruben Doria, a human being, who died on or about the 22nd day of September, 2007, and that further aggravated circumstances exist, to-wit: that the defendant or an accomplice committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, and/or that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant, and/or the murder was committed in the course of, in furtherance of, or in immediate flight from the crime of Robbery in the First or Second Degree, or Burglary in the First Degree, contrary to RCW 10.95.020(9) and 10.95.020(10) and 10.95.020(11) and 9A.32.030(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW

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1 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional
2 time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.533, and against the peace and
3 dignity of the State of Washington.

4 COUNT II

5 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
6 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
7 AGGRAVATED MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a
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9 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
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11 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
12 on or about the 22nd day of September, 2007, did unlawfully and feloniously, with premeditated intent to
13 cause the death of another person, cut or stab Abraham Abrazado, thereby causing the death of Abraham
14 Abrazado, a human being, who died on or about the 22nd day of September, 2007, and that further
15 aggravated circumstances exist, to-wit: that the defendant or an accomplice committed the murder to
16 conceal the commission of a crime or to protect or conceal the identity of any person committing a crime,
17 and/or that there was more than one victim and the murders were part of a common scheme or plan or the
18 result of a single act of the defendant, and/or that the murder was committed in the course of, in
19 furtherance of, or in immediate flight from the crime of Robbery in the First or Second Degree, or
20 Burglary in the First Degree, contrary to RCW 10.95.020(9) and 10.95.020(10) and 10.95.020(11) and
21 9A.32.030(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly
22 weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as
23 defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and
24 adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.533, and
against the peace and dignity of the State of Washington.

19 COUNT III

20 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
21 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
22 ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on
23 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
24 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
proof of one charge from proof of the others, committed as follows:

25 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
on or about the 22nd day of September, 2007, did unlawfully and feloniously take personal property
belonging to another with intent to steal from the person or in the presence of Ruben Doria, the owner
INFORMATION- 2

thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to Ruben Doria, said force or fear being used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the Defendant or an accomplice was armed with a deadly weapon, to-wit: a knife or other cutting instrument, contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.533, and against the peace and dignity of the State of Washington.

COUNT IV

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of BURGLARY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:


That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously, with intent to commit a crime against a person or property therein, enter or remain unlawfully in a building, located at 9315 South Ash Street, Apt. C, Tacoma, and in entering or while in such building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a knife or other cutting instrument, a deadly weapon, contrary to RCW 9A.52.020(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.533, and against the peace and dignity of the State of Washington.

DATED this 16th day of January, 2008.

TACOMA POLICE DEPARTMENT
WA02703

GERALD A. HORNE
Pierce County Prosecuting Attorney

By:


EDMUND M. MURPHY
Deputy Prosecuting Attorney

WSB #: 14754

INFORMATION- 3

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 1464913F-F20F-6452-D8EEBD42603E304E**.

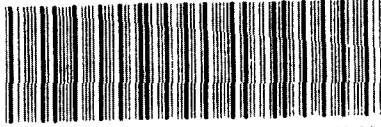
This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX C

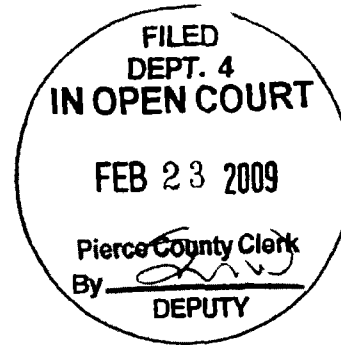
Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 146493EE-F20F-6452-D160CBE2C9AB8C80

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00299-5 31575338 AM:INF1 02-27-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON,

SECOND AMENDED INFORMATION

Defendant.

DOB: 7/3/1986

SEX : MALE

RACE: BLACK

PCN#: 539347438

SID#: UNKNOWN

DOL#: UNKNOWN

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of AGGRAVATED MURDER IN THE FIRST DEGREE, committed as follows:

That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cut or stab Ruben Doria, thereby causing the death of Ruben Doria, a human being, who died on or about the 22nd day of September, 2007, and that further aggravated circumstances exist, to-wit: that the defendant or an accomplice committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, and/or that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant, and/or that the murder was committed in the course of, in furtherance of, or in immediate flight from the crime of Robbery in the First Degree or Burglary in the First Degree, contrary to RCW 10.95.020(10) and 10.95.020(11) and 10.95.020(9) and 9A.32.030(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or

SECOND AMENDED INFORMATION- 1

ORIGINAL

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

an accomplice, was armed with a firearm, to-wit: a handgun or a rifle, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of AGGRAVATED MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cut or stab Abraham Abrazado, thereby causing the death of Abraham Abrazado, a human being, who died on or about the 22nd day of September, 2007, and that further aggravated circumstances exist, to-wit: that the defendant or an accomplice committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, and/or that there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant, and/or that the murder was committed in the course of, in furtherance of, or in immediate flight from the crime of Robbery in the First Degree or Burglary in the First Degree, contrary to RCW 10.95.020(10) and 10.95.020(11) and 10.95.020(9) and 9A.32.030(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun or a rifle, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

COUNT III

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

1 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
2 proof of one charge from proof of the others, committed as follows:

3 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
4 on or about the 22nd day of September, 2007, did unlawfully and feloniously, while committing or
5 attempting to commit the crime of Robbery in the First Degree or Burglary in the First Degree, and in the
6 course of or in furtherance of said crime or in immediate flight therefrom, cut or stab Ruben Doria, and
7 thereby causing the death of Ruben Doria, a human being, not a participant in such crime, on or about the
8 22nd day of September, 2007, contrary to RCW 9A.32.030(1)(c), and in the commission thereof the
9 defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife or
10 other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and
11 invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive
12 sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or
13 an accomplice, was armed with a firearm, to-wit: a handgun or a rifle, that being a firearm as defined in
14 RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to
15 the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of
16 the State of Washington.

12 COUNT IV

13 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
14 authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of
15 MURDER IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on
16 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
17 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
18 proof of one charge from proof of the others, committed as follows:

19 That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington,
20 on or about the 22nd day of September, 2007, did unlawfully and feloniously, while committing or
21 attempting to commit the crime of Robbery in the First Degree or Burglary in the First Degree, and in the
22 course of or in furtherance of said crime or in immediate flight therefrom, cut or stab Abraham Abrazado,
23 and thereby causing the death of Abraham Abrazado, a human being, not a participant in such crime, on
24 or about the 22nd day of September, 2007, contrary to RCW 9A.32.030(1)(c), and in the commission
thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a
knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602,
and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive
sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or
an accomplice, was armed with a firearm, to-wit: a handgun or a rifle, that being a firearm as defined in
RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to

SECOND AMENDED INFORMATION- 3

the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

COUNT V

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously take personal property belonging to another with intent to steal from the person or in the presence of Ruben Doria, the owner thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to Ruben Doria, said force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the Defendant or an accomplice inflicted bodily injury upon Ruben Doria, and/or displayed what appeared to be a firearm or other deadly weapon, and/or was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in contrary to RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a hand gun or a rifle, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

COUNT VI

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse DARRELL KANTREAL JACKSON of the crime of BURGLARY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That DARRELL KANTREAL JACKSON, acting as an accomplice, in the State of Washington, on or about the 22nd day of September, 2007, did unlawfully and feloniously, with intent to commit a crime against a person or property therein, enter or remain unlawfully in a building, located at 9315 South

Ash Street, Apt. C, and in entering or while in such building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a deadly weapon, other than a firearm to-wit: a knife or other cutting instrument, that being a deadly weapon as defined in RCW 9.94A.125/9.94A.602, and invoking the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and/or in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun or a rifle, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

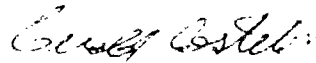
DATED this 20th day of February, 2009.

TACOMA POLICE DEPARTMENT
WA02703

GERALD A. HORNE
Pierce County Prosecuting Attorney

mrp

By:



GERALD T. COSTELLO
Deputy Prosecuting Attorney
WSB#: 15738

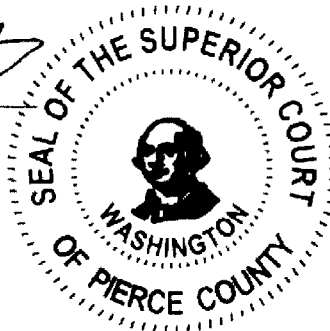
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter **SerialID: 146493EE-F20F-6452-D160CBE2C9AB8C80**.

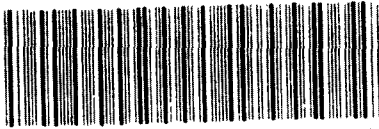
This document contains 5 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX D

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464BB6B-110A-9BE2-A90B62D217157C9D

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00299-5 31576136 WRD 02/27/09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

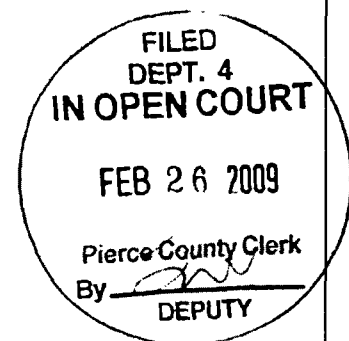
DARRELL KANTREAL JACKSON

VERDICT FORM A
COUNT I

Defendant.

We, the jury, find the defendant Guilty (write in the words "Not
Guilty" or "Guilty") of the crime of murder in the first degree as charged in Count I.

Ramon Rogers.
PRESIDING JUROR



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 1464BB6B-110A-9BE2-A90B62D217157C9D.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX E



08-1-00299-5 31576137 VRD 00 1 09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON.

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

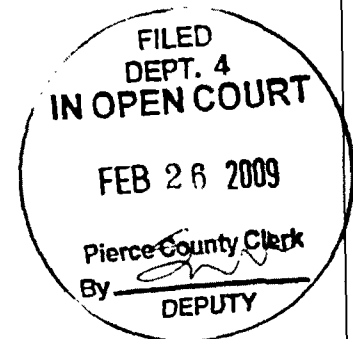
DARRELL KANTREAL JACKSON

**VERDICT FORM B
COUNT II**

Defendant.

We, the jury, find the defendant Guilty (write in the words "Not Guilty" or "Guilty") of the crime of murder in the first degree as charged in Count II.

Ramon Rogers
PRESIDING JUROR



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM

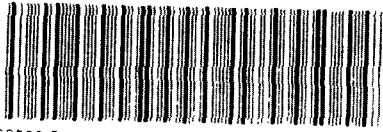


Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 14649287-F20F-6452-D426B921607DEF99.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX F



08-1-00299-5 31576238 VRD 02-27-09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DARRELL KANTREAL JACKSON

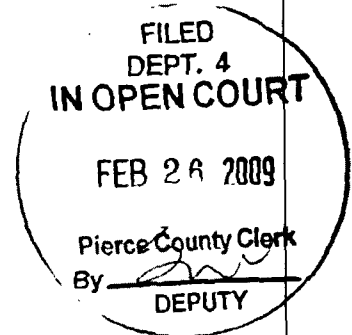
Defendant.

CAUSE NO. 08-1-00299-5

VERDICT FORM C
COUNT III

We, the jury, find the defendant Guilty (write in the words "Not
Guilty" or "Guilty") of the crime of murder in the first degree as charged in Count III.

Ramon Rogers
PRESIDING JUROR



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 1464BA33-110A-9BE2-A9F9BA33E227B882**.

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APPENDIX G

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464BE3A-110A-9BE2-A98F49EC64DF7496

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00299-5 31576240 VRC 07 07 09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON

VERDICT FORM D
COUNT IV

Defendant.

We, the jury, find the defendant Guilty (write in the words "Not
Guilty" or "Guilty") of the crime of murder in the first degree as charged in Count IV.

Ramon Rogers
PRESIDING JUROR

FILED
DEPT. 4
IN OPEN COURT

FEB 26 2009

Pierce County Clerk
By [Signature]
DEPUTY

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM

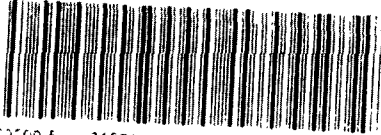


Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 1464BE3A-110A-9BE2-A98F49EC64DF7496.

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APPENDIX H



08-1-00299-5 31576246 JRC 00 17 09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DARRELL KANTREAL JACKSON

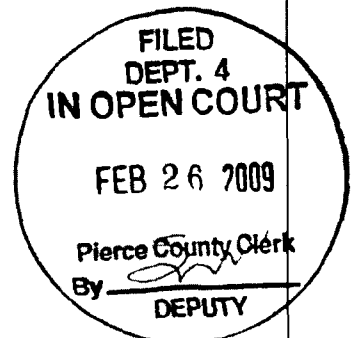
Defendant.

CAUSE NO. 08-1-00299-5

**VERDICT FORM E
COUNT V**

We, the jury, find the defendant Guilty (write in the words "Not Guilty" or "Guilty") of the crime of robbery in the first degree as charged in Count V.

Ramon Rogers.
PRESIDING JUROR



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 1464BDBD-110A-9BE2-A9AEF2452436643D**.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

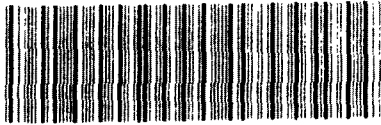
APPENDIX I

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464BD50-110A-9BE2-A941739B0E650D89

Certified By: Kevin Stock Pierce County Clerk, Washington

1791 2/27/2009 #0186



08 1 00299-5 31576248 VRD 02-27-09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DARRELL KANTREAL JACKSON

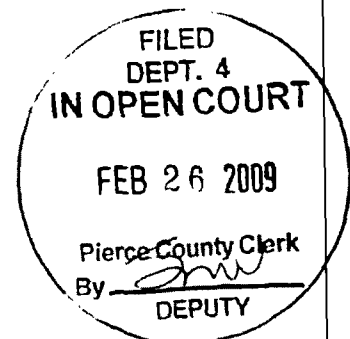
Defendant.

CAUSE NO. 08-1-00299-5

**VERDICT FORM F
COUNT VI**

We, the jury, find the defendant Guilty (write in the words "Not Guilty" or "Guilty") of the crime of burglary in the first degree as charged in Count VI.

Ramon Rogers
PRESIDING JUROR



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



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<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 1464BD50-110A-9BE2-A941739B0E650D89**.

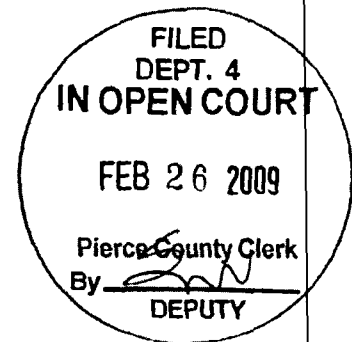
This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX J

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464BCE2-110A-9BE2-A9FDD3BA151FCC34

Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DARRELL KANTREAL JACKSON

Defendant.

CAUSE NO. 08-1-00299-5

SPECIAL VERDICT
AGGRAVATING CIRCUMSTANCES
COUNT I

We, the jury, having found the defendant guilty of murder in the first degree for count I, as defined in Instruction 15, make the following answers to the questions submitted by the court:

QUESTION: Has the State proven the existence of the following aggravating circumstance beyond a reasonable doubt?

The defendant committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime?

ANSWER: Yes
(Yes/No)

QUESTION: Has the State proven the existence of the following aggravating circumstance beyond a reasonable doubt?

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464BCE2-110A-9BE2-A9FDD3BA151FCC34

Certified By: Kevin Stock Pierce County Clerk, Washington

There was more than one person murdered and the murders were part of a common scheme or plan or the result of a single act of the person?

ANSWER: Yes
(Yes/No)

QUESTION: Has the State proven the existence of the following aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in furtherance of, or in immediate flight from robbery in the first degree?

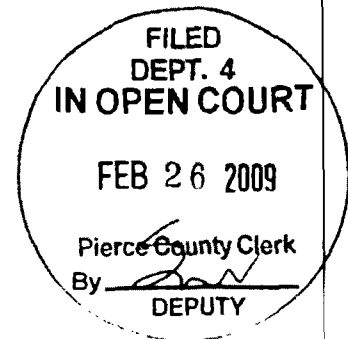
ANSWER: Yes
(Yes/No)

QUESTION: Has the State proven the existence of the following aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in furtherance of, or in immediate flight from burglary in the first degree?

ANSWER: Yes
(Yes/No)

Richard Rogers
PRESIDING JUROR



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 1464BCE2-110A-9BE2-A9FDD3BA151FCC34**.

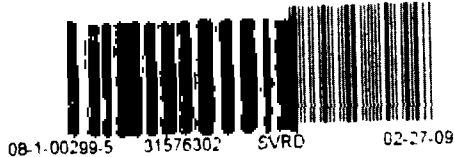
This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX K

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464BEB7-110A-9BE2-A9190102E3614DB1

Certified By: Kevin Stock Pierce County Clerk, Washington



FILED
DEPT. 4
IN OPEN COURT

FEB 26 2009

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON

SPECIAL VERDICT
AGGRAVATING CIRCUMSTANCES
COUNT II

Defendant.

We, the jury, having found the defendant guilty of murder in the first degree for count II, as defined in Instruction 16, make the following answers to the questions submitted by the court:

QUESTION: Has the State proven the existence of the following aggravating circumstance beyond a reasonable doubt?

The defendant committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime?

ANSWER: Yes
(Yes/No)

QUESTION: Has the State proven the existence of the following aggravating circumstance beyond a reasonable doubt?

There was more than one person murdered and the murders were part of a common scheme or plan or the result of a single act of the person?

ANSWER: Yes
(Yes/No)

QUESTION: Has the State proven the existence of the following aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in furtherance of, or in immediate flight from robbery in the first degree?

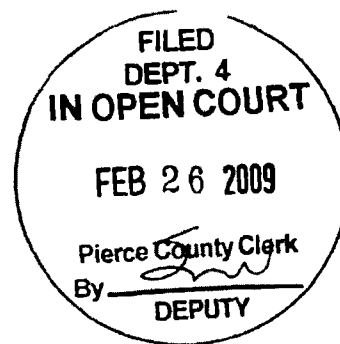
ANSWER: Yes
(Yes/No)

QUESTION: Has the State proven the existence of the following aggravating circumstance beyond a reasonable doubt?

The murder was committed in the course of, in furtherance of, or in immediate flight from burglary in the first degree?

ANSWER: Yes
(Yes/No)

Ramon Rogers.
PRESIDING JUROR



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter **SerialID: 1464BEB7-110A-9BE2-A9190102E3614DB1**.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX L

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 146498E0-F20F-6452-DCF5CB09D35D1AC0

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-00299-5 31576306 SVRD 02 27 09

FILED
DEPT. 4
IN OPEN COURT

FEB 26 2009

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON

SPECIAL VERDICT FORM 1
COUNT I

Defendant.

We, the jury, return a special verdict by answering as follows:

Was the defendant DARRELL JACKSON or an accomplice armed with a deadly weapon at the time of the commission of the crime in COUNT I?

ANSWER: Yes (Yes or No).

Was the defendant DARRELL JACKSON or an accomplice armed with a firearm at the time of the commission of the crime in COUNT I?

ANSWER: Yes (Yes or No).Ramon Rogers
PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter **SerialID: 146498E0-F20F-6452-DCF5CB09D35D1AC0**.

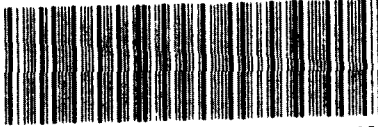
This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX M

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464C07C-110A-9BE2-A910421BEF607DC7

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00299-5 31576313 SVRD 02-27-09

FILED
DEPT. 4
IN OPEN COURT

FEB 26 2009

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON

SPECIAL VERDICT FORM 2
COUNT II

Defendant.

We, the jury, return a special verdict by answering as follows:

Was the defendant DARRELL JACKSON or an accomplice armed with a deadly weapon at the time of the commission of the crime in COUNT II?

ANSWER: Yes (Yes or No).

Was the defendant DARRELL JACKSON or an accomplice armed with a firearm at the time of the commission of the crime in COUNT II?

ANSWER: Yes (Yes or No).Ramon Rogers.
PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



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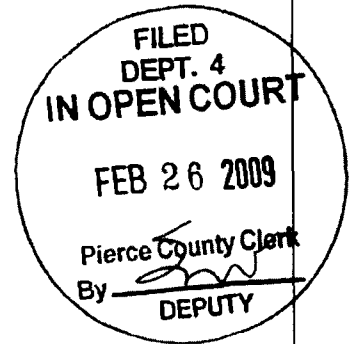
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APPENDIX N

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464C00F-110A-9BE2-A9FAD96FBE71216B

Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON

SPECIAL VERDICT FORM 3
COUNT III

Defendant.

We, the jury, return a special verdict by answering as follows:

Was the defendant DARRELL JACKSON or an accomplice armed with a deadly weapon at the time of the commission of the crime in COUNT III?

ANSWER: Yes (Yes or No).

Was the defendant DARRELL JACKSON or an accomplice armed with a firearm at the time of the commission of the crime in COUNT III?

ANSWER: Yes (Yes or No).Ramon Rogers
PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



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<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: 1464C00F-110A-9BE2-A9FAD96FBE71216B**.

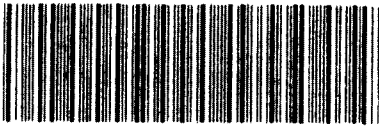
This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX O

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464970B-F20F-6452-D054CE3F98062531

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00299-5 31576316 SVRD 02-27-09

FILED
DEPT. 4
IN OPEN COURT

FEB 26 2009

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DARRELL KANTREAL JACKSON

Defendant.

CAUSE NO. 08-1-00299-5

SPECIAL VERDICT FORM 4
COUNT IV

We, the jury, return a special verdict by answering as follows:

Was the defendant DARRELL JACKSON or an accomplice armed with a deadly weapon at the time of the commission of the crime in COUNT IV?

ANSWER: Yes (Yes or No).

Was the defendant DARRELL JACKSON or an accomplice armed with a firearm at the time of the commission of the crime in COUNT IV?

ANSWER: Yes (Yes or No).Ramon Rogers
PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



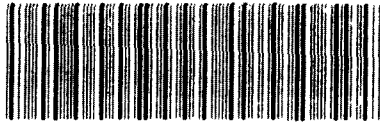
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<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 1464970B-F20F-6452-D054CE3F98062531**.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX P

Case Number: 08-1-00299-5 Date: March 13, 2015
SerialID: 1464C30D-110A-9BE2-A9A52A6F7E241641
Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00299-5 31576324 D.V.P.T. 02-27-09

FILED
DEPT. 4
IN OPEN COURT

FEB 26 2009

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON

**SPECIAL VERDICT FORM 5
COUNT V**

Defendant.

We, the jury, return a special verdict by answering as follows:

Was the defendant DARRELL JACKSON or an accomplice armed with a deadly weapon at the time of the commission of the crime in COUNT V?

ANSWER: Yes (Yes or No).

Was the defendant DARRELL JACKSON or an accomplice armed with a firearm at the time of the commission of the crime in COUNT V?

ANSWER: Yes (Yes or No).

Raman Rogers
PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



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enter SerialID: 1464C30D-110A-9BE2-A9A52A6F7E241641.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX Q

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 1464C290-110A-9BE2-A9FE8518A1D4A741

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00299-5 31576339 SVRD 02-17-09

FILED
DEPT. 4
IN OPEN COURT

FEB 26 2009

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DARRELL KANTREAL JACKSON

Defendant.

CAUSE NO. 08-1-00299-5

**SPECIAL VERDICT FORM 6
COUNT VI**

We, the jury, return a special verdict by answering as follows:

Was the defendant DARRELL JACKSON or an accomplice armed with a deadly weapon at the time of the commission of the crime in COUNT VI?

ANSWER: Yes (Yes or No).

Was the defendant DARRELL JACKSON or an accomplice armed with a firearm at the time of the commission of the crime in COUNT VI?

ANSWER: Yes (Yes or No).Bawon Rogers.
PRESIDING JUROR

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM

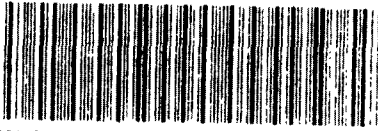


Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 1464C290-110A-9BE2-A9FE8518A1D4A741**.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX R



08-1-00299-5 31767650 JDSWCD 03/13/09

FILED
DEPT. 4
IN OPEN COURT

MAR 27 2009

Pierce County Clerk
By [Signature]
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 08-1-00299-5

vs.

DARRELL KANTREAL JACKSON,

Defendant.

WARRANT OF COMMITMENT

- 1) ☐ County Jail
 2) ☒ Dept. of Corrections
 3) ☐ Other Custody

MAR 27 2009

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto

[] 1 YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail)

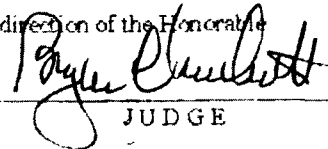
[X] 2 YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement in Department of Corrections custody).


[] 3 YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for
classification, confinement and placement as ordered in the Judgment and Sentence
(Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 3/27/09

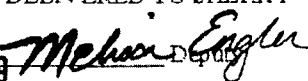
By direction of the Honorable



JUDGE

KEVIN STOCK
CLERKBy: 
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Da MAR 27 2009By:  DeputyFILED
DEPT. 4
IN OPEN COURT

MAR 27 2009

Pierce County Clerk
By: 
DEPUTY

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled
Court, do hereby certify that this foregoing
instrument is a true and correct copy of the
original now on file in my office.

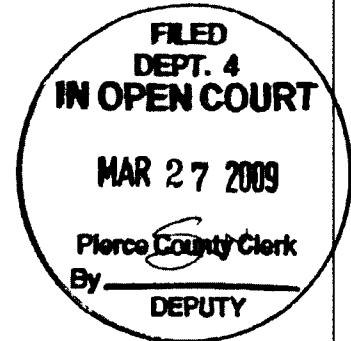
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of Said Court this

_____ day of _____, _____

KEVIN STOCK, Clerk

By: _____ Deputy

mrp



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

MAR 27 2009

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5

vs.

JUDGMENT AND SENTENCE (JES)

DARRELL KANTREAL JACKSON

Defendant.

☒ Prison ☐ RCW 9A.712 Prison Confinement
☐ Jail One Year or Less
☐ First-Time Offender
☐ Special Sexual Offender Sentencing Alternative
☐ Special Drug Offender Sentencing Alternative
☐ Breaking The Cycle (BTC)
☐ Clerk's Action Required, para 4.5
(SDOSA).4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6
and 5.8

SID: NONE

DOB: 07/03/1986

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS

2.1 CURRENT OFFENSE(S) The defendant was found guilty on 02/26/2009
by ☐ plea ☒ jury-verdict ☐ bench trial of.

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
1	AGGRAVATED MURDER IN THE FIRST DEGREE (I-14)	10.95.020(9) 10.95.020(10) 10.95.020(11)(a) 10.95.020(11)(c) 10.95.030(1) 9A.32.030(1)(a) 9A.32.030(1)(c)	FIREARM AND DEADLY WEAPON	09/22/2007	07-266-1176 TPD

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 1 of 11

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

09-9-04034-7

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO	
II	AGGRAVATED MURDER IN THE FIRST DEGREE (D14)	10.95.020(9) 10.95.020(10) 10.95.020(11)(a) 10.95.020(11)(c) 10.95.030(1) 9A.32.030(1)(a) 9A.32.030(1)(c)	FIREARM AND DEADLY WEAPON	09/22/2007	07-266-1176	TPD
V	ROBBERY IN THE FIRST DEGREE (AAA1)	9A.56.190 9A.56.200(1)(a)(i)	FIREARM AND DEADLY WEAPON	09/22/2007	07-266-1176	TPD
VI	BURGLARY IN THE FIRST DEGREE (AAA1)	9A.52.020(1)(a)	FIREARM AND DEADLY WEAPON	09/22/2007	07-266-1176	TPD

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the SECOND AMENDED Information.

☒ A special verdict/finding for use of firearm was returned on Count(s) I, II, V, AND VI RCW 9.94A.602, 9.94A.533.

☒ A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) I, II, V AND VI. RCW 9.94A.602, 9.94A.533.

☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589).

☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number).

2.2 CRIMINAL HISTORY (RCW 9.94A.525): NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7	XVI	LIFE WITHOUT PAROLE	60 MONTHS (F) 24 MONTHS (D)	LIFE WITHOUT PAROLE	LIFE/ \$50,000
II	7	XVI	LIFE WITHOUT PAROLE	60 MONTHS (F) 24 MONTHS (D)	LIFE WITHOUT PAROLE	LIFE/ \$50,000
V	6	IX	77-102 MONTHS	60 MONTHS (F) 24 MONTHS (D)	161-186 MONTHS	LIFE/ \$50,000
VI	6	VII	57-75 MONTHS	60 MONTHS (F) 24 MONTHS (D)	141-159 MONTHS	LIFE/ \$50,000

2.4 ☐ EXCEPTIONAL SENTENCE Substantial and compelling reasons exist which justify an exceptional sentence.

☐ within ☐ below the standard range for Count(s) _____

☐ above the standard range for Count(s) _____

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 2 of 11

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 796-7400

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9A.753

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9A.753)

☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate.

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: JURY VERDICT; NOT APPLICABLE.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1

3.2 ☐ The court DISMISSES Counts _____ ☐ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RN	\$ <u>LOC</u>	Restitution to _____
	\$ _____	Restitution to _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ <u>500.00</u>	Crime Victim assessment
DNA	\$ <u>100.00</u>	DNA Database Fee
PIB	\$ <u>2,000.00</u>	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ <u>200.00</u>	Criminal Filing Fee
FCM	\$ _____	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for _____

\$ _____ Other Costs for _____

\$ 1,800 TOTAL

☒ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☐ shall be set by the prosecutor

☐ is scheduled for _____

☐ **RESTITUTION** Order Attached

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8)

☒ All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ _____ per month commencing _____. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

☐ **COSTS OF INCARCERATION** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 ☒ **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☐ **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with families of victims: Ruben Dona and Abraham Abrazado including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE (not to exceed the maximum statutory sentence)

☐ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

Case Number: 08-1-00299-5 Date: March 13, 2015
SerialID: 1464997C-F20F-6452-D7C44F8339AF7EB0
Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-00299-5

4.4 OTHER:

4.4a BOND IS HEREBY EXONERATED

4.5 CONFINEMENT OVER ONE YEAR The defendant is sentenced as follows:

(a) CONFINEMENT RCW 9.94A.589 Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

LIFE WITHOUT PAROLE ON COUNT I

LIFE WITHOUT PAROLE ON COUNT II

102 MONTHS ON COUNT V

75 MONTHS ON COUNT VI

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>84</u> months on Count No. <u>I</u>	<u>84</u> months on Count No. <u>II</u>
<u>84</u> months on Count No. <u>V</u>	<u>84</u> months on Count No. <u>VI</u>

Sentence enhancements in Counts I, II, V AND VI shall run

☐ concurrent ☒ consecutive to each other.

Sentence enhancements in Counts I, II, V AND VI shall be served

☒ flat time ☐ subject to earned good time credit

Actual number of months of total confinement ordered is: LIFE WITHOUT PAROLE

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

☒ The confinement time on Count(s) I AND II contain(s) a mandatory minimum term of LIFE WITHOUT PAROLE

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589 All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUC3A in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: COUNTS I AND II SHALL BE SERVED CONSECUTIVELY

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers: RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number: RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 435 days

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

[X] COMMUNITY CUSTODY is ordered as follows:

Counts I & II 24 - 48 months each

Count V _____ for a range from 18 _____ to 36 _____ Months;

Count VI _____ for a range from 18 _____ to 36 _____ Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories, or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:

i) Sex offense ii) Violent offense iii) Crime against a person (RCW 9.94A.411)

iv) Domestic violence offense (RCW 10.99.020) v) Residential burglary offense

vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,

vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)

b) the conditions of community placement or community custody include chemical dependency treatment

c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with families of victims: Ruben Doria and Abraham Abrazado

[] Defendant shall remain [] within [] outside of a specified geographical boundary, to wit: _____

[] Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))

☐ The defendant shall participate in the following crime-related treatment or counseling services _____

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse
☐ mental health ☐ anger management and fully comply with all recommended treatment

☐ The defendant shall comply with the following crime-related prohibitions _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

☐ For sentences imposed under RCW 9A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense.

4.7 ☐ **WORK ETHIC CAMP.** RCW 9A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9A.760 and RCW 9A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9A.760(4) and RCW 9A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW _____

9.94A.7602 Other income-withholding action under RCW 9.94A may be taken without further notice.
RCW 9.94A.760 may be taken without further notice. RCW 9.94A.760G

5.4 RESTITUTION HEARING

~~X~~ Defendant waives any right to be present at any restitution hearing (sign initials) DS

5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 FIREARMS You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION RCW 9A.44.130, 10.01.200.

N/A

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER _____

DONE in Open Court and in the presence of the defendant this date: 3/27/09

JUDGE
Print name

Bryan Chushcoff
BRYAN CHUSHCOFF

Gerald Costello
Deputy Prosecuting Attorney

GRANT E. BLINN

WSB # ~~15738~~ 15738

Ronald D. Ness
Attorney for Defendant

RONALD D. NESS

WSB # 5299

Darrell Jackson
Defendant

Print name

Darrell Jackson

FILED
DEPT. 4
IN OPEN COURT

MAR 27 2009

Pierce County Clerk
By [Signature]
DEPUTY

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 08-1-00299-5

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Court Reporter

IDENTIFICATION OF DEFENDANT

SID No. NONE

Date of Birth 07/03/1986

(If no SID take fingerprint card for State Patrol)

FBI No. NONE

Local ID No. NONE

PCN No. 539547438

Other

Alias name SSN, DOB

Race

☐ Asian/Pacific
Islander☒Black/African-
American☐

Caucasian

Ethnicity

☐ Hispanic

Sex

☒

Male

☐ Native American☐

Other

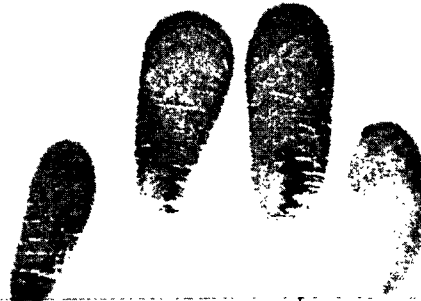
☒Non-
Hispanic☐

Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb



Right Thumb

Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and
signature thereto. Clerk of the Court, Deputy Clerk, Susan M. Wimmer Dated: 3-27-09

DEFENDANT'S SIGNATURE

A handwritten signature in dark ink, appearing to read "Dwight Smith", written over a horizontal line.

DEFENDANT'S ADDRESS

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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enter **SerialID: 1464997C-F20F-6452-D7C44F8339AF7EB0**.

This document contains 13 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX S

Case Number: 08-1-00299-5 Date: March 13, 2015

SerialID: 14649B60-F20F-6452-D020FBE35E2ECB27

Filed By: Kevin Stock Pierce County Clerk, Washington



08-1-00299-5 36916174 CPRM 08-09-11

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff ,

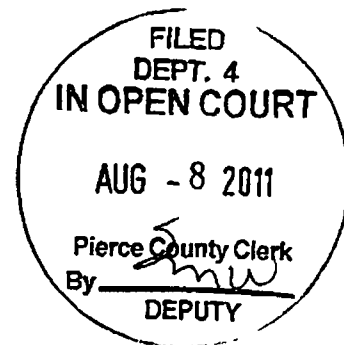
VS

JACKSON, DARRELL KANTREAL,

Defendant

Cause No 08-1-00299-5

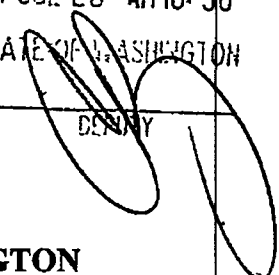
PUBLISHED IN PART OPINION



FILED
COURT OF APPEALS
DIVISION II

11 JUL 26 AM 10:30

STATE OF WASHINGTON

BY  DENNY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TYREEK DEANTHONY SMITH,

Appellant.

39077-9-II

(CONSOLIDATED WITH

No. 39081-7-II)

STATE OF WASHINGTON,

Respondent,

v.

DARREL KANTREAL JACKSON,

Appellant.

PUBLISHED IN PART OPINION

HUNT, J. — Darrel Kantreal Jackson and Tyreek Deanthony Smith appeal their joint jury trial convictions and weapon-enhanced sentences for two counts of aggravated first degree murder, first degree robbery, and first degree burglary. Jackson argues that the trial court violated his constitutional rights to (1) a public trial, by sealing juror questionnaires without first applying the five-factor *Bone-Club*¹ test, (2) due process and a fair trial, by allowing the

¹ *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995).

Consolidated Nos. 39077-9-II and 39081-7-II

prosecutor to vouch for a State witness's credibility on direct examination; and (3) freedom from double jeopardy, by imposing firearm and deadly weapon enhancements for first degree robbery and first degree burglary, which crimes include weapons as elements. Smith argues that the trial court violated his constitutional rights (1) to confront his accusers, by denying his motion to sever trials when his redacted codefendant's confession referenced him without satisfying CrR 4.4(c) or the *Bruton*² rule; and (2) to be free from double jeopardy, by imposing firearm and deadly weapon enhancements for first degree burglary, which included these weapons as elements of the crime. We affirm.

FACTS

I. MURDERS, ROBBERY, AND BURGLARY

On September 23, 2007, police found Ruben Doria and Abraham Warren Abrazado³ stabbed to death in their apartment. Doria's body had duct tape over his mouth and around his hands and feet.

Doria, who had a medical marijuana license to grow marijuana for personal medicinal use, had also engaged in the illegal sale of marijuana to friends and acquaintances. He generally required everyone to telephone before arriving at his apartment. He kept the money from his sales, large amounts of marijuana, and prescription pills in a safe, which caused his friends concern for his safety. About two to three months before his murder, Doria had begun selling marijuana to Darrel Jackson almost daily. Instead of requiring payment for each transaction,

² *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968).

³ Much of the record refers to Mr. Abrazado's middle name "Warren," the name he commonly used.

Consolidated Nos. 39077-9-II and 39081-7-II

Doria "front[ed]" marijuana to Jackson, who, consequently, owed Doria money. 6 Verbatim Report of Proceedings (VRP) at 691.

Jackson lived with Tyreek Smith, who had previously sold cigars to Doria. Smith knew Pierre Spencer, from whom he purchased a .357 revolver some time before the murders.

The night before the murders, Jackson, Smith, and Spencer met to discuss robbing Doria, whom, they believed, would not call the police because of his drug dealings. They planned that Jackson would call Doria under the pretext of purchasing marijuana, but in reality, they would be seeking an opportunity to gain entrance to Doria's apartment. They did not discuss murder or using masks or duct tape. Spencer offered an inactive cell phone to aid during the robbery. Jackson, Smith, and Spencer purchased a phone card to activate service on the phone, which Smith generally possessed.

That same night, the three men drove to Doria's apartment, Jackson phoned Doria with the newly activated cell phone, and Jackson went inside and purchased marijuana from Doria. Because several others were present inside Doria's apartment, Jackson, Smith, and Spencer abandoned the robbery plan and decided to try again the next day. The next morning, Spencer picked up Smith and drove him to an acquaintance's apartment, which Smith entered briefly; Smith returned with a rifle wrapped in a blanket.

Spencer and Smith picked up Jackson, and they returned to Doria's apartment to commit the planned robbery. After they saw Doria's roommate, Warren Abrazado, drive away, Jackson called Doria from the newly activated cell phone,⁴ and Doria let Spencer, Smith, and Jackson

⁴ Phone records showed that this call was made at 1:46 PM, and that the newly activated cell phone also called Doria's phone at 1:44 PM, and 1:51 PM.

Consolidated Nos. 39077-9-II and 39081-7-II

inside his apartment. Jackson had the .357 revolver that Smith had previously purchased from Spencer; Smith had a four to six inch serrated knife attached on his belt and the rifle. Brandishing the revolver at Doria, Jackson instructed Spencer to bind Doria's hands, legs, and mouth with duct tape. Jackson, Smith, and Spencer then put on gloves. Smith bound Doria as instructed. Smith turned up the stereo volume, pointed the rifle at Doria, and helped Spencer gather marijuana plants. Jackson instructed Spencer to look for "a little safe" in the bedroom. 11 VRP at 1447. When Spencer could not locate Doria's safe, Jackson began looking for it. Smith pointed the revolver at Doria and hit him on the head with it, causing Doria to bleed.

When Jackson returned to the front room with the safe, Smith said they had to "get rid of" Doria because he could potentially identify them. 11 VRP at 1450. Someone knocked on the door, and Doria's phone began to ring. After the person at the door left, Spencer resumed carrying marijuana plants to the front room. When Spencer next returned, he saw Smith stabbing Doria. Because they "were in this all together," Smith handed the knife to Jackson, who stabbed Doria once; Jackson then handed the knife to Spencer, who also stabbed Doria once. 11 VRP at 1458. After checking Doria's pulse, Smith slit Doria's throat.

Phone records showed the following additional earlier calls on the day of the robbery and murders: (1) two phone calls between the newly activated cell phone and Smith's ex-girlfriend (Natausha Sabin-Lee) shortly after 11:00 AM; (2) a call between the newly activated cell phone and Smith's relatives in Georgia at 11:23 AM; (3) a call from Smith's relatives to the newly activated cell phone at 12:17 PM; (4) a call from the newly activated cell phone to Spencer's cell phone at 1:14 PM; and (5) a call from the newly activated cell phone to Smith's ex-girlfriend's work place at 1:16 PM.

Phone records for calls made during the time of the robbery and murders showed that the newly activated cell phone called Spencer's cell phone at 3:04 and 3:14 PM; Spencer's cell phone called the newly activated cell phone at 3:22 PM; for the fourth time that day, the recently activated cell phone called Doria's number at 4:21 PM; four minutes later, at 4:25 PM, the recently activated cell phone called Smith's relatives in Georgia; and the same newly activated cell phone made another call to Smith's ex-girlfriend, Sabin-Lee, at 5:33 PM.

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Jackson, Smith, and Spencer were about to load the plants into their vehicle when they heard keys unlocking Doria's apartment door. Abrazado entered, saw Doria's body, and said, "Oh, my God, please don't kill me!" 11 VRP at 1464. Jackson and Smith grabbed Abrazado and pulled him into the apartment; Jackson slit Abrazado's throat. Jackson, Smith, and Spencer loaded into Doria's vehicle the marijuana plants, a video-game console, a laptop computer, and the safe; after unloading at Jackson's apartment, Jackson then drove Doria's vehicle to a local casino, with Spencer following him in his vehicle, where Jackson and Spencer abandoned the stolen vehicle.

On returning to Jackson's apartment, Smith told Jackson and Spencer that he realized they had left their used latex gloves in Doria's apartment. All three men returned to Doria's apartment; Smith went inside, retrieved the gloves, and took another marijuana plant and a bag of marijuana. About four months later, police arrested Jackson and Smith on suspicion of the crimes. Jackson and Smith made incriminating statements against each other. Police also arrested and charged Spencer, who confessed and gave a statement implicating all three men.

II. PROCEDURE

The State charged Jackson, Smith, and Spencer with two counts of aggravated first degree murder, one count of first degree robbery, and one count of first degree burglary, with deadly weapon enhancements on each count. The State later amended the information to add two counts of felony murder against Jackson and Smith and a firearm sentencing enhancement to all counts.

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A. Spencer's Plea Agreement with the State

Spencer entered into a plea agreement with the State, under which he would "immediately enter guilty pleas" to the original charges but if he testified truthfully at Jackson and Smith's trial he may withdraw his guilty pleas and instead plead guilty to first degree murder and first degree manslaughter, for which, instead of life imprisonment without parole, he would receive a sentence between 240 and 320 months (20-26 years) for first degree murder with his sentence for first degree manslaughter running consecutively by law, and with the further understanding that his term of confinement may not be reduced by "good time" credit. Ex. 263. Jackson and Smith moved in limine for permission to cross-examine Spencer about collateral matters to impeach his credibility. The trial court ruled that Jackson and Smith could ask Spencer initial questions about collateral matters to show prior inconsistent statements for the purpose of attacking his credibility.

B. Joinder and Redaction of Codefendants' Statements

After conducting separate CrR 3.5 hearings for Jackson, Smith, and Spencer, the trial court ruled their statements admissible. Smith and Jackson moved for separate trials under CrR 4.4(c)(1) and *Bruton*,⁵ arguing that their heavily-intertwined statements violated their confrontation rights. The trial court denied the motions to sever and asked for all parties' cooperation in redacting problematic portions of Smith's and Jackson's statements to protect them from testifying against each other and to let "a fair trial triumph." VRP (Dec. 30, 2008) at 30.

⁵ *Bruton*, 391 U.S. 123.

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The parties and the trial court worked cooperatively to redact the statements. Despite maintaining that redaction would be insufficient and that only severance would cure the constitutional violation, Smith participated in these efforts to redact the statements. Based on Smith's expressed preference, the trial court redacted Spencer's name, in addition to Jackson's name; the other parties deferred to Smith's preference.

C. Juror Selection

The parties agreed to the use and to the content of the juror questionnaires, including the following language telling the jurors that the court clerk would seal their information:

The information obtained through this questionnaire will be used solely for the purpose of selecting a jury. The questionnaire will become part of the court's permanent record and will not be distributed to anyone except the lawyers and the judge. The original will be filed under seal and no one will be allowed access except by court order

Jackson Clerk's Papers (JCP) at 296 (emphasis added).

When the State asked about sealing the juror questionnaires, the trial court explained its normal procedure: After completing jury selection, the parties return their copies of the juror questionnaires to the court's judicial assistant for shredding. The court retains the original set of questionnaires and orders them sealed, giving the jurors "some expectation of privacy[.]" 1 VRP at 70. Following this explanation, the trial court specifically asked Jackson if this procedure was satisfactory; Jackson replied that it was. Jackson, Smith, and the State then signed a stipulation, agreeing to the trial court's proposal for sealing the jury questionnaires.

The entire jury voir dire occurred on the record in open court. When individual jurors indicated a preference to discuss specific issues privately, the trial court and counsel questioned them in open court, on the record, in the presence of all parties. The trial court neither closed the

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courtroom nor excluded the public at any time. After the parties completed voir dire, the trial court ordered the jury questionnaires sealed.

D. Trial

1. Opening statements

The State's opening statement outlined Jackson and Smith's participation in the robbery, told the jury that they had given statements to police, and explained about Spencer's participation in the crimes and his plea bargain with the State:

The third villain who was responsible will also be here in court. His name is Pierre Spencer. He will come here and tell you how Warren Abrazado and Ruben Doria died and why. He was a codefendant with the two defendants here before you. *He has agreed with the State of Washington to tell you the truth about what happened in exchange for a fairly modest leniency.* He has stepped up. He has pled guilty to the charges against him. You will learn that he is looking at approximately 30 years of hard time in prison. I don't mean 30 years' sentence, serve five years, and get out on [parole]. The evidence will show you that he looking at three decades in prison as punishment for his role, and that is after providing truthful testimony to you.

5 VRP at 516-17 (emphasis added). Neither Smith nor Jackson objected.

Smith's opening statement told the jury that Spencer's testimony would be "incredible"⁶; that Smith's counsel was "going to have a lot of questions for Mr. Spencer"⁷; and that Smith had participated in the planning and commission of the robbery, had been "present when the dummy phone was activated," but that "he was not present in the apartment when Mr. Doria and Mr. Abrazado were stabbed." 5 VRP at 558.

Jackson's opening statement told the jury that Jackson had clearly been involved in planning the robbery. But when Jackson's counsel inadvertently mentioned co-defendant

⁶ 5 VRP at 555.

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Smith's first name, "Tyreek," as having gone with Jackson and others to Doria's apartment the night of the robbery, Smith objected and moved for a mistrial. 5 VRP at 577. Smith argued that by naming him, Jackson had rendered futile the redacted codefendants' statements and the other accommodations for their joint trial. The trial court denied Smith's motion for mistrial and, instead, accepted Jackson's offer to tell the jury that he had been mistaken. Again addressing the jury, Jackson's counsel rephrased, "[L]et me back up and tell you that I misspoke in my last statement. That Mr. Jackson, in his statement, said that he *and others* went to the apartment." 5 VRP at 579 (emphasis added). Smith did not ask the trial court to give the jury a cautionary instruction to disregard Jackson's reference to "Tyreek." 5 VRP at 577.

2. Spencer's testimony

Out of the jury's presence, the State offered two exhibits—Spencer's redacted plea agreement with the State and Spencer's statement on plea of guilty. The State explained that the parties had previously agreed to redact the section discussing polygraph tests from Spencer's plea agreement. When the trial court asked whether this section had "been redacted to everybody's satisfaction," Jackson, Smith, and the State all responded, "Yes." 10 VRP at 1349. The trial court then admitted both Spencer's redacted plea agreement and his guilty plea statement without objection by Jackson or Smith.

After the jury returned to the courtroom, the State asked Spencer on direct examination what type of information he was bound to provide under his plea agreement with the State. Spencer replied that he was obligated to cooperate with the investigation and to give a truthful

⁷ 5 VRP at 573.

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account of the events that had occurred in Doria's apartment. This portion of Spencer's testimony proceeded as follows:

[Prosecutor]: And was it, basically, your understanding that you had *an ongoing duty to provide truthful information* in connection with this case?

[Spencer answered in the affirmative.]

[Prosecutor]: . . . [I]f you have failed to comply with the Plea Agreement, what's your understanding as to what happens?

[Spencer]: It is life without parole.

[Prosecutor]: *If you provide information that is not truthful*, what is your understanding of what happens to you?

[Spencer]: That, I will get life without parole.

...

[Prosecutor]: *If you provide truthful information*, if you cooperate, if you meet with the attorneys for both sides, do everything that you are supposed to do, how much time do you understand that you are looking at at that point?

[Spencer]: 25 years, something like that.

10 VRP at 1354-55 (emphasis added). Neither Smith nor Jackson objected.

After reviewing the agreement terms with Spencer, the State asked:

[Prosecutor]: *So what happens to you today, Mr. Spencer, if you say something that is not true?*

[Spencer]: My plea agreement is void.

[Prosecutor]: What happens to you?

[Spencer]: . . . I will get life without parole.

10 VRP at 1362 (emphasis added). Again, neither Smith nor Jackson objected.

On cross-examination by Smith, Spencer testified that when giving his initial statement to police, he had not been aware that the State was considering offering him leniency. Smith also asked whether (1) under the terms of the plea agreement, Spencer would plead guilty to first degree murder and first degree manslaughter; and (2) Spencer expected to be sentenced to 25 years in prison. Spencer replied, "Yes," to both questions. 11 VRP at 1515. On redirect, the State asked Spencer:

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Is it your understanding that you will be allowed to withdraw your plea and enter a plea to reduced charges of Murder in the First Degree and Manslaughter in the First Degree no matter what you say here today or no matter whether you tell the truth?

11 VRP at 1591. The trial court sustained Jackson's objection that this question "mischaracterize[d] the agreement." 11 VRP at 1591. The State then rephrased the question:

[Prosecutor]: [I]s it your understanding that you will get that deal *regardless of whether you tell the truth?*

[Spencer]: No sir.

11 VRP at 1591-92 (emphasis added). Neither Jackson nor Smith objected to the State's rephrasing of the question or to Spencer's answer.

On re-cross examination by Jackson, Spencer testified:

[Jackson's counsel]: Isn't it true that the person who decides whether or not you are being completely truthful is sitting right here, the prosecutor?

[Spencer]: I don't think so, sir.

[Jackson's counsel]: These 14 people, here, don't decide, do they?

11 VRP at 1599. The trial court sustained the State's objection that the statement was argumentative.

3. Motions for mistrial and to dismiss

After the State rested, Smith renewed his motions for mistrial and severance. Pointing to Jackson's redacted statements—which substituted "someone else" for "Spencer" as the person who had first approached, hit, and stabbed Doria—Smith argued that the jury would attribute the described actions to him, rather than to Spencer, and that such attribution would prejudice him (Smith). 13 VRP at 1820. The trial court denied Smith's motions, ruling that the redactions complied with *Bruton* and that the jury had been properly instructed.

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4. Closing arguments

During closing argument, the State asked the jury to evaluate Spencer's demeanor on the stand, reminded them that they were the sole judges of credibility, and argued:

[Spencer] was told, from day one, you need to tell the truth. Never was he told, hey, you need to implicate Jackson; you need to implicate Smith; you need to make the State's case work. What he was told, from day one, was that you have to tell the truth. He knows because he has signed this written plea agreement that tells [him] in no uncertain terms, if you don't tell the truth, life in prison, no parole. That is a huge incentive for him to come in here and take his oath seriously and tell you the truth.

14 VRP at 1884-85. Neither Smith nor Jackson objected.

In Smith's closing argument, he emphasized the trial court's instruction for the jury to evaluate Spencer's testimony with "great caution." 14 VRP at 1950. In rebuttal, the State agreed, reiterating that it was appropriate for the jury to look at Spencer's testimony with caution.

E. Verdicts and Sentences

The jury found both Jackson and Smith guilty of all six counts; the jury also answered "yes" on the special verdicts for the aggravating sentencing factors and the deadly weapon enhancements (being armed with both a knife and a gun). JCP at 255-64, Smith Clerk's Papers (SCP) at 82-88. At sentencing, the trial court merged counts 1 and 3 and also merged counts 2 and 4, imposed sentences of life in prison without parole for the aggravated murder counts and high standard-range sentences for the first degree robbery and first degree burglary counts, and added the weapon enhancements.

Jackson and Smith appeal their convictions and enhanced sentences.

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ANALYSIS

I. SEALING OF JURY QUESTIONNAIRES

Jackson argues that the trial court violated his right to a public trial by sealing the jury questionnaires without first conducting a courtroom-closure analysis under *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995). This argument fails. We hold that the trial court's sealing of the confidential juror questionnaires did not constitute a courtroom closure and, therefore, no *Bone-Club* analysis was required.

In response to the State's question at the beginning of voir dire, the trial court explained its normal procedures for sealing juror questionnaires: (1) Only counsel and the trial court would view the questionnaires; (2) the questionnaires would not be available to the general public; and (3) the court clerk would seal the questionnaires after voir dire. Jackson agreed to the language in the juror questionnaires that explained these procedures and expressly affirmed that he was satisfied with these procedures. Thereafter, Jackson actively participated in voir dire, using the questionnaires to his advantage by identifying and engaging with jurors who asked to be questioned individually.

As we recently held in *In re Pers. Restraint of Stockwell*, 160 Wn. App. 172, 180-81, 248 P.3d 576 (2011), the trial court's sealing of juror questionnaires after voir dire is not "structural error";⁸ nor does it render the trial fundamentally unfair. As was the case in *Stockwell*, Jackson

⁸ An error is "structural" when it renders a criminal trial "fundamentally unfair or an unreliable vehicle for determining guilt or innocence." *Stockwell*, 160 Wn. App. at 180-81 (quoting *State v. Momah*, 167 Wn.2d 140, 149, 217 P.3d 321 (2009) (quoting *Washington v. Recuenco*, 548 U.S. 212, 218-19, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006)), cert. denied, 131 S. Ct. 160 (2010)).

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had full access to the questionnaires and benefitted from the trial court's promise to the prospective jurors that their questionnaires would be sealed after voir dire; this assurance of confidentiality made it more likely that the jurors would candidly reveal in their questionnaires information that Jackson might use to challenge them for cause. *See Stockwell*, 160 Wn. App. at 180-81.

As we noted in *Stockwell*, sealing juror questionnaires after voir dire, at most, affects only the public's right to "open" information connected to the trial 160 Wn. App. at 181. Here, however, the sealing procedure did not affect the public's right to open information because Jackson and Smith used the "content of the questionnaires" to question the jurors "in open court, where the public could observe." *Stockwell*, 160 Wn. App. at 183. Under these circumstances, there was no courtroom closure and, therefore, no need for the trial court to consider the *Bone-Club* factors.⁹ Accordingly, we hold that the trial court did not err in sealing the jurors' questionnaires after voir dire without first conducting a *Bone-Club* analysis.

II. NO PROSECUTORIAL MISCONDUCT—"VOUCHING"

Jackson next argues that we should reverse his first degree premeditated murder convictions because prosecutorial misconduct deprived him of his constitutional due process right to a fair jury trial, a challenge that he attempts to raise for the first time on appeal. More specifically, he argues that (1) the prosecutor acted with ill-intention in recounting Spencer's plea agreement to testify truthfully, thereby impliedly assuring Spencer's veracity; and (2) this

⁹ We decline to follow *State v Coleman*, 151 Wn. App. 614, 214 P.3d 158 (2009), in which Division One of our court held that the trial court was required to conduct a *Bone-Club* analysis before sealing juror questionnaires that contained information about the jurors' sexual history. *See also State v Tarhan*, 159 Wn. App. 819, 246 P.3d 580 (2011). We find more persuasive Judge Van Deren's concurring opinion in *Stockwell*, 160 Wn. App. at 182.

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improper vouching was flagrant and ill-intentioned and allows him (Jackson) to raise this challenge for the first time on appeal, despite his failure to object below. We disagree.

Because Jackson clearly announced at the trial's outset his intent to attack Spencer's credibility based on his plea bargain with the State, the State was entitled to engage in anticipatory rehabilitation of this witness. Therefore, the State's direct examination of Spencer about his plea bargain agreement to testify truthfully cannot be said to have been "flagrant and ill-intentioned," the standard that Jackson must but cannot meet where he failed to object below.¹⁰ *State v. Weber*, 159 Wn.2d 252, 270, 149 P.3d 646 (2006) (quoting *State v. Stenson*, 132 Wn.2d 668, 719, 940 P.2d 1239 (1997)).

At the outset, we acknowledge our Supreme Court's recent decision in *State v. Ish*, 170 Wn.2d 189, 241 P.3d 389 (2010), addressing the admissibility of witness plea-agreement truthfulness provisions¹¹ similar to the one at issue here: Four justices characterized eliciting testimony about this plea-agreement provision as proper method to "pull the sting" on direct examination from anticipated cross-examination of the witness. *Ish*, 170 Wn.2d at 206 (Madsen, C.J., concurring). Four other justices characterized this testimony as a "mild" form of vouching not warranting reversal. *Ish*, 170 Wn.2d at 197 (emphasis added) (citing *United States v. Brooks*, 508 F.3d 1205, 1210 (9th Cir. 2007)). One dissenting justice characterized this testimony as reversible-error vouching. *Ish*, 170 Wn.2d at 206. Ultimately, although five justices characterized as "vouching" the State's eliciting a witness's testimony about his plea-agreement

¹⁰ In so holding here, it is not our intention to condone or to invite improper vouching.

¹¹ After similarly redacting a provision requiring a State's witness to take a polygraph, the trial court admitted the plea agreement over Ish's objection and allowed the State to examine the witness about his promise to testify truthfully. *Ish*, 170 Wn.2d at 194.

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promise to testify truthfully, eight justices agreed and held that, under the facts of *Ish*, this conduct was not reversible error. *Ish*, 170 Wn.2d at 200, 201. Applying *Ish* to the analogous facts here, we, too, hold that the trial court did not commit reversible error in allowing the State on direct examination to elicit Spencer's testimony about his plea-agreement promise to testify truthfully.

A prosecutor has reasonable latitude to draw inferences from the evidence, including inferences about witness credibility. *State v. Gregory*, 158 Wn.2d 759, 810, 147 P.3d 1201 (2006). Nevertheless, it is improper for the State to vouch for the credibility of a government witness; vouching may occur when the prosecution places the prestige of the government behind the witness or indicates that information not presented to the jury supports the witness's testimony. *United States v. Roberts*, 618 F.2d 530, 533 (9th Cir. 1980), *cert. denied*, 452 U.S. 942 (1981). Four justices, plus the dissenting justice in *Ish*, stated that the type of questioning in which the State engaged constituted "vouching" with the four characterizing it as only "mild" vouching. *Ish*, 170 Wn.2d at 197. Regardless of whether characterized as "vouching" or not, however, a majority of eight justices agreed that this questioning was not improper under the facts of *Ish* and was not reversible error. *Ish*, 170 Wn.2d at 191, 206.

Both the lead and concurring opinions in *Ish*, again, eight justices, also noted that, under the circumstances in that case, it was not reversible error for the State to have anticipated a credibility attack on its witness and to rehabilitate its witness in advance of this inevitable attack: Where "there is little doubt" that the defendant will attack the veracity of a State's witness during cross-examination, for example, the State is entitled to engage in preemptive questioning of its witness on direct to "take the sting" out of the inevitable damaging cross-examination. *Ish*, 170

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Wn.2d at 199 n.10. Such is the case here. During pre-trial motions in limine seeking permission to address Spencer about collateral matters, both Jackson and Smith indicated their intent to impeach Spencer's credibility.

As expected, Smith immediately attacked Spencer's credibility in his opening statement:

When somebody says something is incredible, it can be either astonishing and shocking or it can be not believable.

You are going to hear testimony at this trial from a witness that is going to be incredible. When I use that word, I mean—I'm using it with both of its meanings. Both of its connotations. That witness is Pierre Spencer. Pierre Spencer is going to give you incredible testimony. In order to understand why his testimony is incredible, we need to back up and start at the beginning of the story.

5 VRP at 556.

Mr. Spencer had an advantage. He knew what the police knew. . . . His attorney has access to . . . police reports, autopsy reports, witness statements, Mr. Smith's statement, Mr. Jackson's statement.

...
The prosecutor's office was interested in hearing his side of the story. The prosecutor's office believed that they had the three right people, Mr. Spencer, Mr. Smith, and Mr. Jackson. They wanted confirmation. They were willing to make a bargain in exchange for that information.

Mr. Spencer . . . told an incredible story.

...
Mr. Spencer entered into a deal . . . where he pled guilty to two offenses. I believe the first was for the murder. If he comes in and testifies and if he tells you all the same story that he told the police . . . he will be allowed to withdraw his guilty plea, and he will get one count of First Degree Murder and one count of First Degree Manslaughter. He will be sentenced to approximately 30 years in prison. He is a young man, mid-20's. His option was life without [parole] or to get out in his 50's.

5 VRP at 568-71. Jackson and Smith left no doubt they would attack Spencer's credibility based on his plea agreement once Spencer took the witness stand.

Given these background facts, the State correctly anticipated a defense attack on Spencer's credibility as a witness, based on his plea agreement. Jackson failed to object below to

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Spencer's testimony about his plea bargain agreement to testify truthfully. Jackson now fails on appeal to show that the State's elicitation of this testimony on direct examination was "flagrant and ill-intentioned." Br. of Appellant Jackson at 34. Accordingly, we hold that Jackson cannot raise this issue for the first time on appeal as grounds for reversing his conviction, and we do not further consider it.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

III. JOINT TRIAL

Smith separately argues that the trial court erred in denying his motion to sever his trial from Jackson's because (1) the redacted form of Jackson's confession left a clear reference to Smith, and (2) Jackson's counsel implicated Smith by name in his opening statement. Smith also argues that the trial court erred in denying his related motions for a mistrial based on the same reasons. Smith's argument fails.

A. Standards of Review; Burdens of Proof

1. Redacted codefendant's confession

We review de novo alleged violations of a criminal defendant's constitutional right to confront the witnesses against him,¹² including a non-testifying codefendant's post-arrest confession. *State v. Larry*, 108 Wn. App. 894, 901-02, 34 P.3d 241 (2001), *review denied*, 146 Wn.2d 1022 (2002). When a codefendant's confession naming the other defendant is admitted at their joint trial at which the codefendant does not testify and thus does not subject himself to

¹² U.S. CONST. amend. VI; WASH. CONST. art. I, § 22 (amend. 10).

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cross-examination by the other defendant, the non-testifying codefendant essentially becomes one of the defendant's accusers. *Bruton*, 391 U.S. at 134.

Nevertheless, the trial court may properly admit a codefendant's confession that redacts all reference to the other defendant because such a statement is not "incriminating on its face" and becomes incriminating "only when linked with evidence introduced later at trial (the defendant's own testimony)." *Richardson v Marsh*, 481 U.S. 200, 208, 107 S. Ct. 1702, 95 L. Ed. 2d 176 (1987). Redactions are insufficient, however, if the parties replace the defendant's name with a blank space or the word "deleted" *Gray v. Maryland*, 523 U.S. 185, 195, 118 S. Ct. 1151, 140 L. Ed. 2d 294 (1998). We have previously articulated Washington's general rule as follows:

Redacted statements must be (1) facially neutral, i.e., not identify the non-testifying defendant by name (*Bruton*); (2) free of obvious deletions such as "blanks" or "X" (*Gray*); and (3) accompanied by a limiting instruction (*Richardson*).

Larry, 108 Wn. App. at 905.

2. Joint trial

Separate trials are not favored in Washington; thus, the defendant bears the burden to show that a joint trial is so manifestly prejudicial that it outweighs concerns for judicial economy. *State v. Jones*, 93 Wn. App. 166, 171, 968 P.2d 888 (1998), *review denied*, 138 Wn.2d 1003 (1999). To prevail, a defendant must show specific, undue prejudice from the joint trial. *State v. Grisby*, 97 Wn.2d 493, 507, 647 P.2d 6 (1982). The trial court's decision regarding severance of trials is discretionary. We review a trial court's decision on a motion for severance under CrR 4.4(c)(2) for manifest abuse of discretion. *State v. Wood*, 94 Wn. App. 636, 641, 972 P.2d 552 (1999).

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3. Mistrial

Trial courts “should grant a mistrial only when the defendant has been so prejudiced that nothing short of a new trial can insure that the defendant will be tried fairly.” *State v. Rodriguez*, 146 Wn.2d 260, 270, 45 P.3d 541 (2002) (quoting *State v. Mak*, 105 Wn.2d 692, 701, 718 P.2d 407, cert. denied, 479 U.S. 995 (1986), overruled on other grounds by *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994)). We review a trial court’s denial of a motion for mistrial for abuse of discretion. *Rodriguez*, 146 Wn.2d at 269. We will find abuse of discretion only when “no reasonable judge would have reached the same conclusion.” *State v. Hopson*, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989) (quoting *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 667, 771 P.2d 711, 780 P.2d 260 (1989)). Before we will overturn a trial court’s denial of a motion for mistrial, there must be a “substantial likelihood” that the error prompting the mistrial affected the jury’s verdict. *Rodriguez*, 146 Wn.2d at 269-70. We find no such error here.

We examine three factors to determine whether a trial court abused its discretion in denying a motion for mistrial: (1) the seriousness of the irregularity, (2) whether the comment was cumulative to other evidence properly admitted, and (3) whether the trial court could have cured the irregularity by an instruction to the jury. *State v. Crane*, 116 Wn.2d 315, 332, 804 P.2d 10 (1991) (citing *State v. Weber*, 99 Wn.2d 158, 164-65, 659 P.2d 1102 (1983)). We find no such abuse of discretion here.

B. Smith’s Redacted Statement

Jackson and Smith both made implicating statements to police. Jackson gave two statements, which the trial court admitted into evidence and from which detectives read in redacted format during the joint trial. The parties had redacted Smith’s and Spencer’s names,

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replacing them with pronouns (e.g. "others," "someone," "he"). 13 VRP at 1762-1773, 1784-1812. Smith argues that Jackson's redacted statements' inclusion of the substituted words "others" or "another" clearly implied that Jackson was working with two other people and, thereby, prejudiced him (Smith). Br. of Appellant Smith at 18.

At trial, Detective Gene Miller testified about his interview with Jackson using the following redacted statements with plural pronouns:

Jackson said that he and *the others* went [to Doria's apartment] together to do a quote, lick. . . . According to Jackson, he was just supposed to . . . be *their* way in.

. . .
Jackson claimed that he did not go over to Ruben's apartment on Saturday . . . but that *the others* did go there to do the robbery.

. . .
Jackson said that he and *the others* then all went over to Ruben's. . . . According to Jackson, *the others* pushed Ruben into the apartment and he followed.

. . .
Jackson replied that *someone else* was doing most of the talking.

. . .
Jackson described one of *the others* stabbing Ruben and then, quote, slitting his throat.

13 VRP at 1762-67 (emphasis added). We disagree with Smith that the substituted words prejudiced him. See Br. of Appellant Smith at 18

Jackson's redacted statements comply with the above *Larry* requirements as follows: (1) Working together, the parties redacted both Jackson's and Smith's statements to omit all references to each other, rendering the statements facially neutral; (2) the parties deleted the names of all three co-defendants (including Spencer who pled guilty) and substituted neutral pronouns such as "others," "another," or "someone," (see 13 VRP at 1771), leaving no obvious deletions with blacked out or stricken words, blank spaces or "Xs" in spaces left behind by

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removed words; and (3) the trial court instructed the jury not to consider one codefendant's statement against another codefendant. *Larry*, 108 Wn. App. at 905.

Although acknowledging the rule we annunciated in *Larry*, Smith argues that *Larry* does not go far enough to comply with *Gray*, 523 U.S. at 195, namely that using neutral pronouns is an "obvious alteration" and, as such, they are also "directly accusatory." Br. of Appellant Smith at 24 (quoting *Gray*, 523 U.S. at 194) (emphasis omitted). But, as we noted in *Larry*,

Since *Gray*, the federal Courts of Appeal have issued divergent opinions on whether the use of neutral pronouns in redacted statements adequately protect the non-testifying defendant. Several courts have found neutral pronouns proper: *United States v. Logan*, 210 F.3d 820 (8th Cir., 2000) (use of "another individual" did not violate confrontation clause); *United States v. Verduzco-Martinez*, 186 F.3d 1208, 1213-14 (10th Cir., 1999) (use of "another person" did not violate confrontation clause); and *United States v. Akinkoye*, 185 F.3d 192, 198, (4th Cir., 1999) *cert. denied*, 528 U.S. 1177, 120 S. Ct. 1209, 145 L. Ed. 2d 1111 (2000) (use of "another person" and "another individual" did not violate confrontation clause);¹³

Larry, 108 Wn. App. at 903.

Smith does not persuade us that the parties' agreed use of the neutral pronouns in Jackson's statements violated his confrontation rights under *Bruton*, nor that we should alter the rule in *Larry*. We hold, therefore, that the trial court did not abuse its discretion in admitting Jackson's redacted statement.

¹³ We also noted other federal Courts of Appeals' criticizing use of some neutral pronouns, including "someone," in a different context. But these cases held such uses to be harmless error, where violation of the *Bruton* rule did not result in prejudice "so devastating that the jury could not be expected to disregard it if the district court had instructed them to do so." *Larry*, 108 Wn. App. at 904 n.2 (quoting *United States v. Guerrero*, 756 F.2d 1342, 1348 (9th Cir. 1984)).

Consolidated Nos. 39077-9-II and 39081-7-II

C. Motion To Sever

Smith next contends that the trial court abused its discretion in denying his motion to sever his trial from Jackson's because redaction of Jackson's statements did not eliminate the prejudice from admission of the statement. Again, we disagree.

CrR 4 4(c), which governs the severance of codefendants' trials, provides in part:

(1) A defendant's motion for severance on the ground that an out-of-court statement of a codefendant referring to him is inadmissible against him shall be granted unless:

- (i) the prosecuting attorney elects not to offer the statement in the case in chief; or
- (ii) deletion of all references to the moving defendant will eliminate any prejudice to him from the admission of the statement.

As we explain above, working cooperatively, the parties omitted all reference to Smith from Jackson's police statements to create the redacted documents admitted into evidence. These redactions complied with the requirements set forth in *Larry*, 108 Wn. App. at 905. Meeting these *Larry* requirements also shows that the redactions meet CrR 4.4(c)(1)(ii)'s requirement that deletion of references to Smith "eliminate any prejudice to him from the admission of the statement"

As we also explain above, the redacted statements omitted all named references to other codefendants and substituted neutral pronouns for the codefendants' names. The trial court considered Smith's input and made fairly severe redactions in an effort to alleviate Smith's concerns. Moreover, the trial court expressly instructed the jury not to consider one codefendant's statement against another codefendant, which instruction we presume the jury followed. *State v. Stein*, 144 Wn.2d 236, 247, 27 P.3d 184 (2001).

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We hold, therefore, that (1) Smith has failed to carry his burden to show that his joint trial with Jackson was so manifestly prejudicial that it outweighed concerns for judicial economy, *Jones*, 93 Wn. App. at 171; and (2) the trial court did not abuse its discretion in denying his motion to sever.

D. Motion for Mistrial

Smith also argues that the trial court erred in denying his motions for a mistrial because (1) Jackson's counsel used his codefendants' names "Smith" and "Spencer" in his opening statements,¹⁴ and (2) substituting neutral pronouns for his codefendants' names in Jackson's redacted statements unfairly prejudiced him. Br. of Appellant Smith at 13. Both arguments fail.

Smith moved for a mistrial after Jackson's attorney inadvertently mentioned Spencer's name and Smith's first name in his opening statement:

... Darrel[] admitted, first of all, that he was involved in planning this robbery. He was involved in it. No doubt about it. He admitted that he took *Mr. Spencer* and Mr. Jackson¹⁵ over to Ruben's apartment on Friday night with the plan being that there was going to be a robbery. He admitted that he went in, and there was too many people there, so it did not occur. He admitted that he went back—actually, there was [sic] four people there that night. He went back the next day with Pierre, or as he was known, Mexico, and Tyreek.

5 VRP at 577 (emphasis added). Smith objected. The trial court excused the jury and heard argument. The State pointed out that Smith's attorney had just finished telling the jury in his opening statement that Smith had participated in the planning of the criminal episode; therefore,

¹⁴ Jackson did not use Smith's last name during his opening statement. Instead, he said: "Mr. Spencer," "Mr. Jackson," and "Tyreek," Smith's first name; he later referred to Spencer's first name, "Pierre" or "Mexico," without using Spencer's last name. Jackson also stated that, a fourth person, evidently not a codefendant, had been present. 5 VRP at 577.

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theoretical harm was minimal. Jackson's attorney offered to tell the jury he had misspoken and that he would like to correct his statement, which he immediately did.

Clearly, Jackson's attorney made a mistake in mentioning Smith's and Spencer's names. But the prejudice, if any, was minimal. First, in Smith's own opening statement, defense counsel disclosed Smith's participation as follows:

My client, Mr. Smith, participated in the planning of this robbery. He was present, depending on how you view the timeline, half-hour, five hours. It was a little unclear on the timeline. Certainly, less than a day. He was present with the other participants in this robbery. He helped plan it. He was present when the dummy phone was activated at the 7-Eleven. Certainly, we can fault Mr. Smith for the actions that he took on September 21st in that regard.

5 VRP at 557-58 (emphasis added). Thus, the only portion of the Jackson's opening statement that Smith did not repeat in his own opening statement was Jackson's comment: "He went back the next day with Pierre, or as he was known, Mexico, and Tyreek." 5 VRP at 577.

In our view, Jackson's brief inadvertent mention of Smith's first name did not so manifestly prejudice Smith that the trial court was required to grant Smith a new separate trial in order to be tried fairly. *Rodriguez*, 146 Wn.2d at 270. Nor do we conclude that there existed a "substantial likelihood" that Jackson's slight error affected the jury's verdict when the evidence supporting Smith's jury conviction included phone records, testimony from his ex-girlfriend, and his own statements, and where Jackson's counsel immediately corrected his mistake in front of the jury, telling them he had misspoken. *Rodriguez*, 146 Wn.2d at 269. Because this minor mistake took place at the beginning of a very long trial and the parties immediately corrected the

¹⁵ In line three of this quote, the record clearly says, "Mr. Jackson," not, "Mr. Smith." 5 VRP at 577. If this was a mistake, apparently no one ever corrected it under RAP 9.5(c), RAP 9.9, or RAP 9.10.

Consolidated Nos. 39077-9-II and 39081-7-II

mistake, we hold that a reasonable judge could have reached the conclusion that mistrial was not appropriate, and, therefore, the trial court did not abuse its discretion in denying a new trial. *Hopson*, 113 Wn.2d at 284.

Smith renewed his motion for mistrial at the end of the State's case, arguing that Jackson's redacted statement's reference to "someone else," instead of to Spencer's name, would cause the jury to assume that Jackson was referring to Smith. 13 VRP at 1820. As the State noted on the record at the time, it was Smith who had requested, and had achieved, removal of all mention of Spencer's name from Jackson's statements. Satisfied that the redaction comported with *Bruton* and that it had properly instructed the jury to use Jackson's statement against Jackson only, the trial court denied this later motion for a mistrial as well. We hold that under these facts and circumstances, the trial court did not abuse its discretion when it denied Smith's second motion for mistrial.

IV. DOUBLE JEOPARDY

Jackson and Smith both argue that the trial court's imposition of firearm and deadly weapon sentence enhancements for their first degree burglary convictions violated constitutional prohibitions against double jeopardy because being armed with a deadly weapon is an element of first degree burglary. Jackson also makes the same argument to challenge the enhanced sentence for his first degree robbery conviction. These arguments fail.

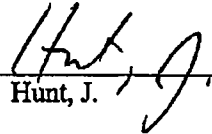
As the State correctly notes, our Supreme Court recently resolved this issue in *State v Kelley*, 168 Wn.2d 72, 82, 226 P.3d 773 (2010). In *Kelley*, the Supreme Court held that imposition of a firearm enhancement under RCW 9.94A.533(3) is mandatory and does not

Consolidated Nos. 39077-9-II and 39081-7-II

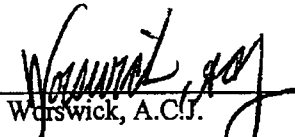
constitute double jeopardy, even where use of a weapon is an element of the underlying crime.

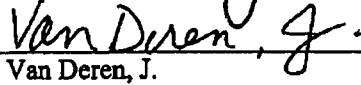
Kelley, 168 Wn.2d at 79. *Kelley* controls, and defendants' arguments fail.

We affirm.


Hunt, J.

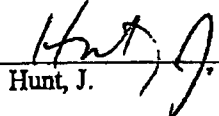
We concur:


Worswick, A.C.J.


Van Deren, J.

HUNT, J. (concurring) — To the extent that my having signed the majority opinion in *Stockwell*¹⁶ implies that I intended to hold that sealing juror questionnaires constitutes a partial courtroom closure, I now correct that impression. I agree with Judge Van Deren's concurring opinion statement in *Stockwell*: "I would hold that under the particular facts of this case, there does not appear to be any closure during voir dire triggering the requisite *Bone-Club/Waller* analysis." *Stockwell*, 160 Wn. App. at 183.

I concur


Hunt, J.

¹⁶ *In re Pers. Restraint of Stockwell*, 160 Wn. App. 172, 248 P.3d 576 (2011).

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 14649B60-F20F-6452-D020FBE35E2ECB27.

This document contains 28 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX T

June 19 2013 2:20 PM

KEVIN STOCK
COUNTY CLERK
NO: 08-1-00298-7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

TYREEK D. SMITH,
Appellant.

STATE OF WASHINGTON,
Respondent,

v.

DARRELL K. JACKSON,
Appellant.

No. 39077-9-II

MANDATE

Pierce County Cause No.
08-1-00298-7

No. 39081-7-II
Pierce County Cause No.
08-1-00299-5

The State of Washington to: The Superior Court of the State of Washington
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on July 26, 2012 became the decision terminating review of this court of the above entitled case on June 4, 2013. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees have been awarded in the following amount:

Judgment Creditor Respondent State: \$18.89
Judgment Creditor A.I.D.F.: \$16,139.59
Judgment Debtor Smith: \$8,069.79
Judgment Debtor Jackson: \$8,069.80

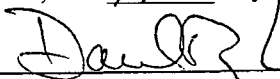
MANDATE

39077-9-II (consol w/39081-7-II)

Page Two



IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 19th day of June, 2013.


Clerk of the Court of Appeals,
State of Washington, Div. II

Andrew Peter Zinner
Nielsen, Broman & Koch, PLLC
1908 E Madison St
Seattle, WA, 98122-2842
zinnera@nwattorney.net

Rebecca Wold Bouchey
Nielsen, Broman & Koch, P.L.L.C.
1908 E Madison St
Seattle, WA, 98122-2842
BoucheyR@nwattorney.net

Melody M Crick
Pierce Co Dep Pros Atty
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171
mcrick@co.pierce.wa.us

Hon. Bryan Chushcoff
Pierce Co Superior Court Judge
930 Tacoma Ave So.
Tacoma, Wa 98402

APPENDIX U

RECEIVED
OCT 27 2009
Nielsen, Broman & Koch, P.L.L.C.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

TYREEK DEANTHONY SMITH and
DARRELL KANTREAL JACKSON,

Defendants.

Nos. 08-1-00298-7
08-1-00299-5

COA No. 39077-9-II

 **COPY**

VERBATIM REPORT OF PROCEEDINGS (Volume 14)

BE IT REMEMBERED that on the 24th day of February, 2009, the following proceedings were held before the Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the county of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to wit:

APPEARANCES

On Behalf of Plaintiff(s): GERALD COSTELLO
GRANT BLINN
Deputy Prosecuting Attorney

On Behalf of Defendant(s): THOMAS WEAVER
Tyreek Deanthony Smith Attorney at Law

Darrell Kantreal Jackson RONALD NESS
Attorney at Law

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Closing Arguments

Mr. Blinn 1873

Mr. Weaver 1917

Mr. Ness 1974

Rebuttal Closing by Mr. Costello 1984

1 THE COURT: Good morning, everyone. Welcome back.
2 Please be seated.

3 Are we ready for the jury?

4 MR. BLINN: Yes, Your Honor.

5 MR. NESS: Yes.

6 THE COURT: Mr. Weaver, are you ready?

7 MR. WEAVER: Your Honor, after Mr. Blinn does his
8 closing argument, I'm going to need a short recess to
9 switch computers around.

10 THE COURT: You are anticipating about an hour or
11 so?

12 MR. BLINN: Yes.

13 THE COURT: Keep in mind, we have been advised
14 about one of the jurors has an appointment at 11:30
15 elsewhere in the building. We are going to try to stop
16 right about then. We tried to reschedule the
17 appointment, and we couldn't do it. We will take a
18 break after Mr. Blinn's deal so we can do, that and
19 give people a bathroom break at that point. We will
20 proceed.

21 Let's have the jury.

22 (Whereupon, the following
23 proceedings were held in the
presence of the jury.)

24 THE COURT: Welcome back, everyone. Please be
25 seated.

1 Ladies and gentlemen, please now give your
2 attention to the closing argument of Mr. Grant Blinn on
3 behalf of the plaintiff, the State of Washington.

4 Mr. Blinn.

5 MR. BLINN: Thank you, Your Honor. May I dim the
6 lights?

7 THE COURT: Proceed.

8 MR. BLINN: On September 21, 2007, these two
9 defendants planned a burglary and robbery, a lick. The
10 next day, they executed their plan and their victims
11 with extreme brutality. Ruben Doria opened the door to
12 his apartment for a friend, and his friend closed the
13 door on his life.

14 These defendants and Pierre Spencer left death and
15 destruction in their wake. What did they do? Came in,
16 stabbed Ruben Doria repeatedly, sliced his throat, left
17 Ruben to die, bound, gagged and helpless. Ruben
18 Doria's last words were gurgling sounds made behind the
19 mask of duct tape that covered his mouth and restricted
20 his breathing.

21 Warren's only crime was returning to what he
22 thought would be the sanctity of his own home, not
23 knowing that the criminal episode was going on inside,
24 not knowing that it would not yet be over. His throat
25 was sliced. He was left to die a horrible death, a

1 very similar fate to what Ruben Doria suffered.

2 Why? What was the reward? What was the motive?
3 Jealousy? Ideology? Nothing close. In the end, the
4 reward was a few marijuana plants, immature, not
5 capable of being harvested, plants that would die days
6 later, a used X Box, a used laptop, a nominal amount of
7 cash, and the temporary -- the short-lived use of
8 Ruben Doria's Isuzu Trooper. They used it for an hour,
9 maybe two hours, before they discarded it in a vacant
10 section of the Emerald Queen Casino parking lot like a
11 piece of trash, apparently, worth nothing more than the
12 life of its owner.

13 So, who was involved? Who would be willing to put
14 such a cheap price on these two young albeit very
15 imperfect lives? Who would be willing to cause their
16 deaths for such a small reward? You don't have to look
17 very far. You don't have to look any further than
18 inside this courtroom. Tyreek Smith, Darrell Jackson,
19 and Pierre Spencer were more than willing to extinguish
20 Ruben's life and Warren's life for a very small price,
21 indeed.

22 Now, Tyreek Smith tells detectives -- and you hear
23 evidence about this. He wasn't even there when it
24 happened. The first thing that you need to understand
25 about what Tyreek Smith says is that he has had the

1 opportunity to think about what he is going to tell
2 detectives. He told detectives that Natausha Sabin-Lee
3 had told him that the police were coming for him. You
4 heard that from Natausha Sabin-Lee as well.

5 Tyreek Smith's slick denials were denials that he had
6 time to think about. He had time to think about what
7 evidence that the detectives might have, what he might
8 be able to explain away, and what he could not deny,
9 what he might be able to put a spin on, and how he
10 might be able to put that spin together. He denies
11 that he was involved. That denial should not be
12 believed for any amount of time. There is a mountain
13 of evidence pointing to Tyreek Smith's involvement.

14 Tyreek Smith had a motive to commit this crime.
15 At the time this happened, Tyreek Smith didn't have
16 money. He owed rent. He wanted to help
17 Darrell Jackson with his rent. He was on the lease for
18 the townhouse with his girlfriend, Natausha Sabin-Lee.
19 The rent was between \$700 and \$800 a month. Tyreek
20 doesn't have a job at D.E.M.O. Clothing anymore.
21 Tyreek Smith needs money. He doesn't have money. He
22 doesn't have a job. He doesn't have a car. In fact,
23 until that Friday, Tyreek Smith didn't even have a cell
24 phone. That adds up to motive for Tyreek Smith.

25 Tyreek Smith was involved in the planning of this

1 criminal episode, and that's one more piece of the
2 puzzle, one more piece of evidence, that Tyreek Smith
3 is lot more involved than he is willing to admit. We
4 know that because he told the detectives that he was
5 involved in the planning. We got together. We were
6 talking about hitting a lick. Along those lines, we
7 know that he was involved in the planning and more
8 involved in the commission of these crimes, these
9 murders, robbery, and burglary, because of his
10 admissions to Sharon Lightner. You remember her. She
11 was Darrell Jackson's sister.

12 She came in here, sat upon the witness stand, and
13 told you about a conversation that she had with
14 Tyreek Smith sometime before these robberies and
15 murders occurred. She told you that she had a
16 conversation with Tyreek, and he told her that, yeah,
17 I'm about ready to re-up on some marijuana. Business
18 is going to be booming. It is evidence that he is
19 involved. It is evidence that he was an active part of
20 the planning. It is evidence that he was there on the
21 day in question.

22 We know that Tyreek Smith was involved in the
23 commission of these crimes because his use of
24 Ramsey Larbi's phone. That is, obviously, important
25 because we know the phone was used to help commit the

1 murders, the robberies, the burglary. Find who was
2 using the phone during the time of the day in question,
3 and you found at least some of the people involved in
4 committing these crimes.

5 We know that Tyreek Smith was using Ramsey Larbi's
6 phone that day. We know that for a number of reasons.
7 One is, the phone records, more about that in a second,
8 and his admissions to detectives.

9 You will have a copy of this phone chart back in
10 the jury room with you, and there is more than one
11 page. There is also the page for Friday,
12 September 21st. It shows how the phone was activated
13 late that night near the 7-Eleven. Look at this, these
14 calls in purple are calls from Ramsey Larbi's phone.

15 12:38 in the morning, that Saturday, Natausha
16 Sabin-Lee, that is who the phone is being used to call.
17 Pierre Spencer isn't making that call. He has no
18 reason to call Natausha Sabin-Lee. Darrell Jackson is
19 not calling her. He has no reason to call her. The
20 only reason he might ever call her is to look for
21 Tyreek Smith. He is not calling her at 12:38 in the
22 morning to look for Tyreek Smith.

23 We see, as the morning progresses, calls to Pierre
24 Spencer. Now, one of the interesting things about
25 this, of course, is that that also has to be

1 Tyreek Smith. Darrell Jackson doesn't have a
2 relationship with Pierre Spencer.

3 Go on to later in the morning, just after 11:00,
4 more calls to Natausha Sabin-Lee, a call to Uncle
5 Corey, Mr. Smith's Uncle Corey down in Georgia. There
6 can be no doubt that Tyreek Smith was using
7 Ramsey Larbi's cell phone on the day in question.

8 Calling D.E.M.O. Clothing, Natausha Sabin-Lee's
9 work at about 1:15 in the afternoon. A call -- calls
10 later to Ruben Doria, and we will talk more about that
11 in a few minutes. Again, calls to Pierre Spencer, back
12 and forth; a call to Aunt Cheryl in Florida or Georgia,
13 and a call to Natausha Sabin-Lee, 1,052 seconds, right
14 around 17 minutes. There's only one person that is
15 making those calls, and that is Tyreek Smith.

16 We know that Smith was more involved than he is
17 willing to admit to the detectives because of his
18 admissions to Natausha Sabin-Lee. Remember that phone
19 call, 1,052 seconds, right around 17 minutes, at about
20 5:30 on the day of question, how does
21 Natausha Sabin-Lee describe that phone call? What was
22 being said? "Hey, I just hit a lick. I was just
23 involved in hitting a lick." She is not sure exactly
24 what words he used, exactly what pronouns he used. The
25 one thing that she is 100 percent certain about is he

1 admitted to her that he was involved in hitting a lick.
2 He admitted his involvement in the robbery to
3 Natausha Sabin-Lee.

4 Admissions to Bobby Simmons further evidence of
5 Smith's involvement. Remember, Bobby Simmons, that is
6 Darrell Jackson's step-grandfather, right? He is at
7 home late at night, a knock on the door. Well, it is
8 Tyreek Smith. "Hey, we have some plants. Let me use
9 your van. I have some plants. I have to use your van
10 to get these plants out of here." "Really? Why is
11 that?"

12 Tyreek Smith admitted to the police that he went
13 back and smoked some marijuana Friday night. Is he
14 that concerned over the fact that there is going to now
15 be marijuana in his apartment, that he has to go over
16 and wake up Darrell Jackson's step-grandfather to get
17 help moving the plants? Does that make sense?

18 Fleeing the state, it wasn't long after these
19 murders were committed that Tyreek Smith flees the
20 state. Why does he flee the state? Is it coincidence?
21 He admitted to the detectives that it was because,
22 basically, of what he knew about the lick and the
23 homicides, he decided that he had to get out of there;
24 or as he put it in his taped statement, "I have to get
25 the fuck away from here." Really. Why is that?

1 He was fine with being involved in the planning of
2 it. He claimed he backed out when he heard that
3 someone might get hit with the gun. He didn't want to
4 be an active participant in that. The robbery?
5 Apparently, that was fine. Why is he now in a hurry to
6 flee the state if he wasn't involved in the homicides,
7 in the robbery, in the burglary?

8 Again, he had stolen marijuana in his apartment.
9 We know this because he had admitted to detectives that
10 he saw the marijuana in the apartment. You heard it
11 from Bobby Simmons. You heard evidence of this from
12 Brian Moore, from Phaze.

13 Now, on some level, you have to sit back and
14 realize that this looks a lot like a mother overhearing
15 a young boy saying, "Hey, we need to break into the
16 cookie jar." Mother doesn't see anyone break into the
17 cookie jar; but, later, she sees the young boy with
18 crumbs all over his mouth. The little boy looks up at
19 her and says, "I didn't break into the cookie jar. I
20 was involved in planning it. I had some of the cookies
21 with me afterwards, but I had nothing to do with
22 breaking into the cookie jar." I don't want to demean
23 or trivialize the murders of Ruben Doria or
24 Warren Abrazado by comparing it to breaking into a
25 cookie jar, but that's how ridiculous Tyreek's story

1 is.

2 Now, remember, Erik Soderquist came in and
3 testified there was a gap of at least a couple of weeks
4 where Erik Soderquist, probably early September, goes
5 over to Darrell Jackson and Tyreek Smith's apartment at
6 the Sage Terrace. He witnesses Ruben fronting some
7 marijuana to Darrell Jackson, right? One of the other
8 things that he sees when he is in there -- Smith is
9 there. He sees Ruben Doria buying some Swisher Sweet
10 cigars from Tyreek Smith, and Smith has them in the
11 freezer.

12 Now, Misty Morrow, months later, is cleaning out
13 an apartment. She doesn't recall exactly what unit it
14 was. She can't tell you with any certainty that it was
15 Darrell Jackson and Tyreek Smith's apartment, but she
16 finds a safe. The way that the safe is described, it
17 sure looks a lot like the safe that was stolen during
18 the robbery, burglary, and homicides from Ruben Doria's
19 apartment. What is in this safe? Well, nothing.
20 Swisher Sweet wrappers. Now, maybe it is just
21 coincidence; but, if so, it is an incredible
22 coincidence, indeed.

23 Evidence of Smith's involvement, also you need to
24 look at his relationship to the others, to the other
25 people involved in this case, okay. Smith is the

1 linchpin. Smith is the one that plans it; Smith is the
2 one that puts it together; Smith is the one that
3 recruits Pierre Spencer. On some level, it doesn't
4 make sense.

5 Pierre Spencer doesn't know Darrell Jackson. He
6 has seen him a couple of times in the past. It's not a
7 social relationship. They don't hang out together.
8 They don't call each other. They don't spend time
9 together. They have seen each other on a handful -- a
10 couple of prior occasions. Does it make sense to you
11 that Pierre Spencer and Darrell Jackson, who don't have
12 a connection, who don't have a relationship, are going
13 to go over without their mutual friend, Tyreek Smith,
14 to commit a crime, such as this? It is not very far
15 removed than the idea of saying, hey, these two virtual
16 strangers decided to get together and commit these
17 terrible crimes together. It just doesn't make sense
18 when you think about Tyreek Smith's relationship with
19 Pierre Spencer. Tyreek Smith's relationship with
20 Darrell Jackson. It just doesn't make sense that they
21 are going to go, the two of them, and Tyreek is not
22 going to be involved.

23 Now, Pierre Spencer's testimony, of course, is
24 just further evidence of Tyreek Smith's involvement in
25 these crimes. If you expect that Tyreek -- that

1 Pierre Spencer is the cornerstone of our case, you
2 would be mistaken. Pierre Spencer told the truth, and
3 more about that in a minute, but all Pierre Spencer
4 really does is add a few details as to what went on
5 during the commission of these crimes. He corroborates
6 what we already know from the rest of the evidence to
7 be true. Pierre Spencer is not the cornerstone of the
8 case against Smith and the cornerstone against the case
9 of Jackson. He is a piece of the puzzle. We know, for
10 a number of reasons, that Pierre Spencer is telling the
11 truth, not the least of which is his demeanor on the
12 witness stand.

13 Remember, you have been given an instruction that
14 tells you that you are the judges of the credibility of
15 the witnesses. It is up to you to decide who you
16 believe, who you don't believe. There is a list of
17 factors that you are allowed to consider. Basically,
18 what it boils down to is, use your common sense, use
19 your experience with people that try to figure out who
20 is telling you the truth. Did he have a defensive
21 reaction when he was on the stand? Did he answer
22 questions from Smith's attorney and from Jackson's
23 attorney differently than he did from the prosecution?
24 No. He was calm. He was measured in his answers. If
25 he didn't remember, he would be the first to

1 acknowledge that he didn't remember. His demeanor, as
2 a witness, tells you that he is telling you the truth.

3 Now, there can't realistically be any claim that
4 he is trying to frame Jackson because, remember,
5 Jackson admits that he was there. Well, what motive
6 would he have to falsely frame Tyreek Smith? There's
7 no history of any bad blood there. There's no history
8 that Pierre Spencer maybe has an ax to grind against
9 Smith. These two people knew each other in the army.
10 They weren't the closest of friends, but they spent
11 time together. They remained in contact after they
12 were both out of the army, and he has no motive to
13 falsely frame Smith. Again, this gets back to the
14 relationships of the three of them. There is no way
15 Pierre Spencer is going to go over there and commit
16 this crime with just Darrell Jackson, who he barely
17 knows, and leave Tyreek Smith out of it.

18 Now, remember, according to Pierre Spencer and
19 everybody else who testified about the proffer, about
20 the statement that was taken from him last November,
21 and the plea agreement that he told -- that he signed.
22 He was told, from day one, you need to tell the truth.
23 Never was he told, hey, you need to implicate Jackson;
24 you need to implicate Smith; you need to make the
25 State's case work. What he was told, from day one, was

1 that you have to tell the truth. He knows because he
2 has signed this written plea agreement that tells them
3 in no uncertain terms, if you don't tell the truth,
4 life in prison, no parole. That is a huge incentive
5 for him to come in here and take his oath seriously and
6 tell you the truth.

7 Pierre Spencer is also credible because there is a
8 mountain for corroboration for what he's telling you.
9 Patrick Baska -- now the defense may stay say, well,
10 Pierre Spencer had access to the discovery, and he is
11 able to figure out, you know, what the case is all
12 about, what evidence there was. He was able to put a
13 spin on it. That is all well and good. What about
14 Patrick Baska? He never reported what he testified to
15 on the stand. That was never reported to the police.
16 In fact, it was on the eve of trial that he came in and
17 spoke with Mr. Costello.

18 MR. WEAVER: Objection; facts not in evidence.

19 MR. BLINN: That was in evidence. That came in
20 through Baska's testimony.

21 THE COURT: I will allow the jury -- we have
22 already advised the jury of the instructions. I will
23 reiterate that the -- what the evidence showed and what
24 the facts are is in their province. Counsel remarks
25 and statements are not evidence.

1 Proceed.

2 MR. BLINN: He came in and announced, shortly
3 before trial, that he had actually been on the other
4 side of that door, knocking, hearing something going on
5 inside, hearing shuffling, hearing muffled noises,
6 people trying to be quiet, calling Ruben's cell phone,
7 hearing Ruben's phone ring repeatedly. He knew
8 something was wrong. He didn't know exactly what. He
9 was very uncomfortable with the situation. In the end,
10 he decided to leave. It is a decision that perhaps he
11 regrets today, but that is the type of corroboration
12 that Pierre -- well, that is the type of corroboration
13 for Pierre Spencer's testimony that he couldn't have
14 gotten from his review of the discovery.

15 Pierre Spencer also has the advantage, by way of
16 corroboration -- and everyone would have to agree that
17 Pierre Spencer was there. Pierre Spencer was there
18 when Ruben Doria died. Pierre Spencer was there when
19 Warren Abrazado died. What Pierre is describing from
20 the witness stand is something that he has lived
21 through, he has seen, he has heard, he has felt. He is
22 describing something that really happened. He is
23 describing a reality that he has been through. That's
24 why he is able to give you the details that he has. It
25 is a distinct advantage over Tyreek Smith.

1 Tyreek Smith describes essentially an alibi,
2 wasn't there. He was at Sharon Lightner's apartment.
3 Well, that is all well and good, but Tyreek Smith was
4 not actually at Sharon Lightner's apartment when the
5 homicides were going on. When he is describing for the
6 detectives what he was doing and what was going on, he
7 is at a disadvantage because it didn't really happen,
8 and he can't give you the same level of detail because
9 it didn't happen, and he wasn't there.

10 Again, just getting back to the corroboration,
11 Pierre Spencer describes Tyreek Smith washing off the
12 knife in the sink. As you will recall, they swabbed
13 the sink, drops of blood later determined to be
14 consistent with Warren Abrazado. Again,
15 Warren Abrazado's blood found on the envelope just
16 outside the door.

17 In addition to that, further evidence of Smith's
18 involvement is in his false statements. We will talk
19 exactly about what he said in a minute that is false.
20 Think about this, the fact that he is not telling the
21 detectives the truth, that he is not telling
22 Natausha Sabin-Lee the truth, doesn't, in and of
23 itself, make him guilty. It does mean, in this case,
24 that he has something to hide. What does Tyreek Smith
25 have to hide? What is it about the truth that would be

1 so damaging that he couldn't afford for it to be
2 leaked, that he can't afford for the detectives to have
3 it?

4 Well, first of all, statements regarding the use
5 of the Larbi phone. Again, more about that in a
6 minute. He tells Natausha Sabin-Lee, "We got these
7 medical marijuana plants from the UW." You know that
8 is not true. You heard Dr. Moe come in and testify,
9 there is no medical marijuana growing program at the
10 UW.

11 Now, this is interesting, because if you'll
12 remember bobby Simmons coming in to testify,
13 Darrell Jackson's uncle. Simmons didn't recall the
14 exact date that this happened on. When you use your
15 common sense, and you kind of put all of the testimony
16 together. You have to realize that it only makes sense
17 for this to have occurred, this contact with Simmons to
18 have occurred, that night, that Saturday night.

19 Well, what does Smith tell the detectives? I was
20 over at Sharon Lightner's. I saw those guys leave.
21 Sharon Lightner -- I spent the night at
22 Sharon Lightner's place. It wasn't until the next day
23 that I see these plants. Really? Well, Mr. Smith, if
24 you are over at Sharon Lightner's apartment, how do you
25 know that night that the plants are there? What are

1 you doing going over and waking up Bobby Simmons? Why
2 do you need his van? You are over at Sharon Lightner's
3 apartment. You shouldn't even know about any of this.
4 These are the statements of Mr. Smith that are false.
5 These are the statements that show that he has a great
6 deal to be afraid of, that he has something big to
7 hide.

8 Consider his admissions to detectives as further
9 evidence that he is not telling the whole truth, and as
10 further evidence that he's involved. It starts out the
11 very first phone call that he is asked about. Maybe
12 this isn't something that he has expected them to ask
13 him about. He has figured out by now, because of his
14 conversations of Natausha Sabin-Lee, he has to come up
15 with some explanation, some spin for his involvement,
16 or what he claims to be his lack of involvement. Maybe
17 he hadn't planned on them asking him about the phone
18 records.

19 The first phone call he is asked about is the
20 phone call that happens on the day in question at about
21 1:15 in the afternoon. What's his first response?
22 "Hey, I wasn't with them. They must have called
23 Tasha's work looking for me." The message in that is,
24 "Hey, I didn't have the Larbi phone. It wasn't me."

25 They later asked about this 1052-minute call to

1 Natausha Sabin-Lee that happened when she was on her
2 break that Saturday at 5:33 in the afternoon. There is
3 three really interesting things to note about here he
4 didn't specifically remember. "Mr. Smith, what is the
5 deal with this call?" "You know, I don't specifically
6 remember." He goes on to say, "I don't know. Must
7 have been me. They wouldn't have called her and talked
8 to her for that long." Medical marijuana, hitting a
9 lick, oh, no, no, no, never mentioned.

10 Well, the next day, right, they go back and they
11 talk to him again? He has had that evening to process
12 what he has been asked about, what the detectives seem
13 to be interested in. When he is asked about this the
14 next day, you can tell the wheels in his mind have been
15 spinning. He is worried about how can he spin further
16 what he said the day before.

17 It changes ever so slightly. See, the day before
18 it was, I don't specifically remember. It must have
19 been me. Now, it is, well, I made the phone call. I
20 don't remember exactly what we talked about. Really?
21 Well, did you talk about hitting a lick and getting
22 medical marijuana? Yesterday, it was, oh, no, no, no.
23 Next day, "I don't know. I don't remember." So, you
24 can see the story evolving.

25 Another interesting thing is, he is asked about

1 the call made that morning to Uncle Corey and Auntie
2 Cheryl, right? A six-minute call. "Oh, yeah, yeah.
3 Now I remember. Now I recall. I called my
4 Auntie Cheryl about five minutes right before the
5 others left to do the lick." Well, what is interesting
6 about that is, what he is saying is, the others must
7 have left at about 11:30, right? Because it is about
8 five minutes before the other left to do the lick. We
9 all know that the others had the cell phone. The
10 lick -- the cell phone was used in the lick. Well,
11 that is interesting because 12:17, 45 minutes after he
12 is saying that the others left and they must have had
13 the cell phone, there is a call from Uncle Corey for
14 over a minute. It tells you that he is not telling the
15 truth. It tells you that he still had the cell phone.

16 Now, another interesting thing about what he told
17 detectives and how it lines up with the phone records
18 and how it shows you that he is involved, 4:22 p.m. on
19 the day in question, okay, Ramsey Larbi's phone is used
20 to call Ruben's cell. Smith says, "Hey, I can't be
21 involved in this lick. Don't know the guys." He's
22 saying he doesn't know Ruben. That is, essentially,
23 one of the things that he is telling the police. Yet,
24 that afternoon, there is a call from that phone to
25 Ruben's cell, and more later about what that precise

1 call probably means.

2 Four minutes later, the same phone is used to call
3 Uncle Corey for 77 seconds. His explanation when he
4 was confronted with this is, "Oh, yeah. Now I
5 remember. I used it just before the others left and
6 right when they got back." Really? If you are so
7 concerned about how this thing is going to go wrong
8 that you feel the need to back out, why on earth are
9 you saying, "Hey, you know what, guys? I can't go,
10 can't participate in this, too dangerous, don't want to
11 get hit, but, hey, let me use the phone before you go?"
12 "Hey, great to see you back. I need to use the phone
13 again." It doesn't make sense. It tells you that he
14 is guilty.

15 The end result is that the overall tone in the
16 beginning, he is, basically, denying his connection
17 with the Ramsey Larbi phone, and it is slowly over time
18 evolves into admitting to the detectives that he had,
19 in fact, used the phone.

20 So, when you look at the timeline of events -- we
21 will never know exactly what motivated Mr. Smith to put
22 this thing together, but what we do know from
23 Erik Soderquist is that he and Ruben Doria went over to
24 the Sage Terrace Apartments, and there was this
25 marijuana deal. During this, Ruben was fronting the

1 marijuana to Jackson. Jackson, apparently, didn't have
2 the money to pay for it, which goes to Jackson's
3 motive. Smith, of course, is present. We have the
4 transaction with the Swisher Sweets. We don't know
5 exactly what motivated Tyreek Smith to put this
6 together. When you use your common sense, it makes
7 sense, as a theory, to realize that what is going
8 through Tyreek Smith's mind at this point in time is,
9 hey, here is a guy with weed. Maybe he has some cash.
10 He is buying Swisher Sweets from me. I don't have a
11 job, don't have a car, don't have a cell phone, owe a
12 bunch of money in rent.

13 Fast forward a couple of weeks, all of a sudden,
14 he is calling Spencer. Spencer, Smith, Jackson, and
15 Jackson's cousin are meeting in the apartment to plan
16 the lick that they are going to hit the next day. Sure
17 enough, like clockwork, the very next day, the robbery,
18 burglary, and homicides occur. It isn't long after
19 that, a mere six days, that Smith flees to Georgia, not
20 just coincidence.

21 Now, what happened on September 22nd? Here's a
22 little bit of a time line. We know that that he got
23 this call from his -- or to his Uncle Corey at
24 11:23. About five minutes later, 11:28, 11:30, the
25 others leave to do the lick. This is according to what

1 Smith is saying. After that, he receives a call from
2 his Auntie Cheryl. An hour after that, the phone is
3 being used to call Natausha Sabin-Lee at her work.
4 Smith, of course, says the others had the phone. Half
5 an hour after that, Ramsey Larbi's phone is used to
6 call Ruben Doria. Again, it's the last completed call
7 to Ruben Doria.

8 Remember what Detective Ringer said. He noticed a
9 pattern in these phone records, right? For every
10 narcotics transaction, there tended to be two calls.
11 "Hey, we are on our way over." A second call, "Hey, we
12 are outside. Let us in." Now, I submit to you that
13 those are the two phone calls, right there, that you
14 are looking at.

15 Not eight minutes later, you have Mr. Baska
16 knocking at the door. We know from the Lowe's
17 surveillance tape that Warren, not that much later, is
18 leaving Lowe's. Warren's last attempt to call Ruben
19 occurs ten minutes later, and I would submit that is
20 probably the last phone call Warren Abrazado ever made
21 or tried to make.

22 What evidence do we have pointing to Smith's
23 involvement? Again, we have his motive, his admissions
24 to Sharon Lightner. He's going to re-up on some
25 marijuana, business is going to be booming; his

1 planning that he admitted to on Friday night; his use
2 of the Ramsey Larbi phone, his admissions to Sabin-Lee,
3 "I was just involved in hitting a lick. Medical
4 marijuana plants from the UW." His admissions to
5 Simmons that we have this money, the stolen marijuana
6 in his apartment, evidence that he fled the state, the
7 safe that was found with the Swisher Sweet wrappers,
8 his own false statement to detectives, his relationship
9 with the others, and Pierre Spencer's testimony, all of
10 that strongly points to Tyreek Smith's involvement in
11 these crimes.

12 What about Darrell Jackson? Well, his
13 relationship to Ruben puts him in the middle of this as
14 well. Pierre Spencer doesn't know Ruben Doria.
15 Tyreek Smith doesn't know Ruben Doria. The only way
16 these people are getting into that apartment is through
17 Darrell Jackson. Darrell is the key to this crime. He
18 is what allows it to occur. Each one of them plays a
19 role, and each one of the three plays a role that is
20 essential to what happens. Darrell Jackson, no less
21 so. He has the relationship with Ruben Doria. That is
22 his way to get in the front door. Darrell Jackson also
23 had motive.

24 Now, we didn't hear a lot of testimony about
25 exactly what his financial situation was, but what we

1 do know is that he had this debt to Ruben Doria. Ruben
2 was fronting him marijuana. From that, you can
3 probably infer that he didn't have much money. The
4 idea of several thousand dollars, \$7,000 or \$8,000, and
5 a bunch marijuana plants is probably fairly attractive
6 to Darrell Jackson at that point in his life. Again,
7 as with Smith, stolen marijuana plants were in his
8 apartment.

9 We know that Jackson was involved because the
10 phone records. Remember, going back to the phone chart
11 here, here's a phone call -- there is a call at 13:44
12 hours, about 1:45 -- right? -- to Ruben Doria, call
13 forwarded. About a minute and a half later, about a
14 minute and 30 seconds later, he tries again. This time
15 13 seconds. It gets back to what Detective Ringer was
16 testifying about, this pattern of two phone calls.

17 Five minutes later, you have the call, again, from
18 the Larbi phone to Ruben Doria, the last call ever
19 completed to Ruben Doria's phone. We know from
20 Pierre Spencer's testimony -- in fact, we know from
21 Darrell Jackson's admissions that Jackson would have to
22 be the one to call Ruben Doria to gain access in the
23 building. That simply corroborates that, and it shows
24 Jackson's involvement.

25 Now, remember, Alex Robinson? He has known

1 Darrell Jackson for a while. Alex Robinson is one of
2 the people that went over and walked into this horrible
3 scene inside of the apartment. In fact, Alex Robinson
4 was the first one in there. Well, curiously,
5 Darrell Jackson is not over there that night on Sunday
6 the 23rd, but the next time he talks to Alex Robinson,
7 if you have a mutual friend that has been a homicide
8 victim, you would naturally think that would be about
9 the first thing that you are going to talk about.
10 Well, Alex Robinson describes it as, you know, I told
11 him that Ruben and Warren were dead. What did he do?
12 He didn't act shocked and just looked down. No
13 surprise, right? He was there.

14 We know Jackson was involved because he made a
15 number of admissions to detectives. He told the
16 detectives that he was there. Like Smith, he had made
17 a number of false statements to the detectives as well.
18 Think about this, when they are first starting to
19 interview him, before they start the tape-recorded
20 interview, what is he saying? What is he telling the
21 detectives? Ruben? Yeah, I know him. I last saw him
22 about a week before his death. How did you learn of
23 Ruben and Warren's death? Through our friend, Alex
24 Robinson. I wasn't there on Friday. I wasn't there on
25 Saturday. I have never been inside the apartment.

1 Well, the interesting thing is, at this point, the
2 detectives, basically, confront him, and they say, hey,
3 you know what? You are not telling us the truth. You
4 need to come clean. You need to step up, and he nods
5 and he agrees, "Yeah, I'm not telling the truth." So,
6 they continue to work with Mr. Jackson. They continue
7 to question him and slowly, eventually, the lies start
8 to fade away and the truth starts to come into focus.

9 Now, I would submit that what is going on here is
10 not that he is telling the whole truth. He didn't tell
11 the whole truth to the detectives ever, but what he
12 eventually told them was closer to the truth, and at
13 least the critical parts, that he was there when both
14 of them died; he was there that Friday and on Saturday;
15 and he had been in the apartment, at least those
16 statements are true. Eventually, the lies start to
17 fade away, and you get into some, some element of truth
18 even if it is not the whole truth. You also have, as
19 evidence of his involvement, again, Pierre Spencer's
20 testimony.

21 Now, for all of those reasons, you know that both
22 Smith and Jackson are involved in these crimes.
23 Well -- and I submit to you, it is very clear from
24 Pierre Spencer's testimony exactly who did what. Aside
25 from that, how does their involvement make them an

1 accomplice? This is an important instruction. This is
2 not the entire instruction, but it bears reading out
3 loud because it is one of the most important
4 instructions that you are going to get.

5 A person is an accomplice if, with knowledge that
6 it will promote or facilitate the commission of the
7 crime, to either solicit, command, encourage, or
8 request another person to commit the crime or aid or
9 agree to aid another in planning or committing the
10 crime. You can be present at the scene and ready to
11 assist by your presence, and in so doing, you are
12 aiding in the commission of the crime. You don't even
13 have to be at the scene of the crime to be an
14 accomplice.

15 Now, how does that fit in with the charges that
16 you have before you? You have -- each defendant is
17 charged with two counts of Aggravated Murder, one for
18 each victim. Each defendant is charged with two counts
19 of First Degree Murder, what we call Felony Murder.
20 You are committing a felony. In the course of that
21 felony, you cause the death of -- if you are an
22 accomplice, you cause the death of someone who is not
23 the participant, the robbery and the burglary.

24 What I'm going to do is kind of go through the
25 charges backwards because logically it makes sense, to

1 understand why they are involved, why they are an
2 accomplice to the burglary and the robbery. It becomes
3 very obvious as to why they are then also guilty of the
4 murders.

5 Starting with Count 6, we have to prove that on
6 September 22, 2007, the defendant -- and the
7 instruction actually reads "or an accomplice" --
8 entered or remained unlawfully in the building at
9 9315 South Ash, Apartment C. Right? There is no doubt
10 that someone was in that apartment. They may have --
11 may or may not have entered unlawfully, but they
12 certainly remained unlawfully. It is safe to say that
13 once Ruben Doria has a gun pointed to his head, once
14 he's tied up with duct tape, they are welcome to run
15 out. They are at that point obviously remaining
16 unlawfully. It was with intent to commit a crime
17 against a person or property therein. No dispute
18 there, right?

19 We have the laptop that is missing and even the
20 people going into the crime scene immediately notice
21 that was gone. Some plants were missing. Two people
22 hacked, butchered to death. There is no doubt that
23 there was the intent to commit a crime inside.

24 There is also no doubt that the defendant or an
25 accomplice was armed with a deadly weapon, right? You

1 have two dead bodies. It's pretty obvious.

2 There is no dispute that it happened in the state
3 of Washington. For all of those reasons, you know that
4 these defendants are guilty of Burglary.

5 What about the Robbery? Very similar.
6 September 22, 2007, there is this unlawful taking of
7 property not belonging to the defendants from the
8 person or in the presence of Ruben Doria. No dispute
9 about that.

10 Obviously, it was done with intent to commit
11 theft. It was against Ruben's will, or by the use or
12 threat of force. The force or fear was used to obtain
13 possession or prevent resistance from the taking.
14 Someone was armed with a deadly weapon. Again, there
15 can be no dispute that whoever did this was armed with
16 a deadly weapon, and that the acts occurred in the
17 state of Washington.

18 You compare those elements and what must be
19 proved, and you plug Jackson's statement in. Again,
20 Jackson is not telling the entire truth. Even if you
21 100 percent believe Darrell Jackson, here is why he is
22 an accomplice. He admits that he went with the others
23 to do a lick on Friday. He denied at least initially
24 being an active participant in the planning, but he
25 knew that they were going there so that the others

1 could do a lick. His role was to get the others
2 inside. Sounds an awful like agreeing to aid in
3 committing -- agreeing to aid another in committing the
4 crime, doesn't it? That makes Jackson an accomplice.
5 In addition to what he did on Friday, he actually got
6 the others in on Saturday.

7 Also, at some point during a statement to
8 detectives, he claimed he was just the lookout. Well,
9 that makes him guilty. That makes him an accomplice.
10 That makes him an accomplice to the robbery and to the
11 burglary. At that point, if he is just a lookout, he
12 is present at the scene, and he is ready to assist by
13 his presence being a lookout, telling the others if
14 someone is coming, and it is aiding in the commission
15 of a crime. Then, of course, bringing the plants
16 downstairs, further evidence of aiding in the
17 commission of the crime of robbery and the crime of
18 burglary.

19 Smith, again, his statement is even farther than
20 the truth, farther from the truth than Jackson's. Even
21 if you take Smith's statements and assume for the sake
22 of argument that it is true, he is talking about a
23 plan. Killing was not part of the plan. What you can
24 gather from that is, there was a plan. Smith knew
25 about what the plan was. Smith was a part of the plan.

1 Smith played a role in the planning. How does that fit
2 in with the accomplice liability instruction? Aids or
3 agrees to aid another in planning the crime. It
4 doesn't matter if he is present at the scene or not.
5 Even if you take Smith's statements to be true, which
6 you should not, he is still guilty of the robbery. He
7 is still guilty of the burglary. These other quotes
8 from Smith, again, just demonstrate further that he is
9 active, he is participating in the planning of the
10 robbery and the burglary. He didn't have a way to pay
11 the rent, what are we going to do? We're going to hit
12 a lick together. Again, that sounds an awful lot like
13 Smith has knowledge that it will promote or facilitate
14 the commission of the robbery or the burglary, and he
15 is agreeing to aid in planning or committing the crime.

16 Now, the other thing, the more subtle thing is, he
17 is saying, hey, I used this cell just before the others
18 left. Well, he was there the night before when the
19 cell was activated. He has to know what the cell is
20 going to be used for. He is the last one to possess
21 the cell phone before the others leave. Even if you
22 believe what he is saying, what he is, essentially,
23 saying, reading between the lines, is, hey, I gave the
24 others the cell phone. I did that knowing that it
25 would plan or facilitate the commission of a crime.

1 That, by his own statement, makes him an accomplice.
2 It is interesting to note that he is also the one that
3 brings Pierre Spencer into this. Even if you believe
4 him, that he wasn't there, he didn't go along, he
5 didn't want to involve himself in this, he is still
6 bringing the transportation element, Spencer's car,
7 into the equation, and he is doing so, so that this
8 crime can be committed.

9 Now, at the end of the day, you might not believe
10 Pierre Spencer, you might not believe Darrell Jackson,
11 or you might not believe Tyreek Smith. The Judge has
12 instructed you that you are not to use Smith's
13 statements against Jackson or Jackson's statements
14 against Smith. I'm not suggesting that you should. It
15 is absolutely worth noting that the common thread among
16 Smith, Spencer, and Jackson, what do they all say?
17 Hey, it wasn't me. No, no, no, not me. I'm just on
18 the outside of the bubble here. These other two guys,
19 they are the bad guys. They are the ones that did it.
20 It's as though it is some kind of train wreck that they
21 are powerless to stop and, yet, can't take their eyes
22 away from it. How did I get over to that apartment? I
23 don't know Ruben. Oh, yeah, the others. All three of
24 them have in common the fact that they are pointing to
25 everybody else involved, but themselves, for

1 responsibility in this crime.

2 How does all of this tie into the concept of
3 Felony Murder, Counts 3 and 4? Here's what we have to
4 prove -- right? -- we have to prove that the defendant
5 or an accomplice was committing robbery or burglary and
6 that they caused Ruben Doria's death in the course and
7 furtherance of such crime -- Ruben was not a
8 participant -- and that the acts occurred in the state
9 of Washington.

10 Think about just the first element, someone
11 committing a robbery? Again, absolutely. They stole a
12 number of items of property by force from Ruben Doria
13 from inside of his apartment. Someone committing a
14 burglary? Absolutely. We have to prove that the
15 defendant or an accomplice caused Ruben's death in the
16 course and furtherance of such crime, there is no
17 dispute that Ruben's death was caused in the course and
18 furtherance of the robbery, the burglary. They have to
19 prove that Ruben Doria was not a participant -- that is
20 a given -- and that the acts occurred in the state of
21 Washington. It's the same thing with Count 4, right?
22 The Felony Murder, the Murder in the First Degree,
23 involving Warren Abrazado.

24 So, here, again, is where it all ties together
25 with the whole accomplice instruction. We don't have

1 to prove that any of these people intended for
2 Counts 3 and 4. We don't have to prove that anyone
3 intended to cause a death. We just have to prove that
4 they are an accomplice to the robbery or the burglary.
5 Once you understand that, the rest of it is academic.
6 They are guilty of murder. Someone's death was caused
7 in the course and furtherance of or immediate flight
8 from the commission of these felonies. It makes them
9 guilty of murder. It doesn't matter if they planned
10 it. It doesn't matter if they intended it. All it
11 matters is that they are involved in the robbery or the
12 burglary as an accomplice.

13 Now, that is different from being an accomplice
14 for Counts 1 and 2, the Premeditated Murder. In order
15 to be an accomplice to Premeditated Murder, you have to
16 actually know that someone is going to commit a murder,
17 okay. That has to be part of the plan that you are
18 involved in, that you are aware of, and that you are
19 willing to participate in.

20 By the way, it's interesting to note that you have
21 received an instruction as to what the defense to
22 Murder, especially for Counts 2 and 3 might be -- I'm
23 sorry, 3 and 4. They did not commit or encourage the
24 homicide. This, again, would mostly apply to
25 Tyreek Smith if you believe his story and that he

1 wasn't armed with a deadly weapon.

2 Well, Tyreek Smith, of course, did commit or
3 encourage a homicide. He was armed with a deadly
4 weapon. He had reasonable grounds to believe that the
5 others were armed. Remember, at what point did he back
6 out when he heard there was going to be a pistol
7 involved? He was involved in the planning and the
8 robbery up to that point. He had to know that the
9 others were going to be armed.

10 He also had to know that there was a reason to
11 believe that death or serious injury was likely to
12 result. Guns or no guns, knives or no knives, robbery
13 is a dangerous business. Burglary is a dangerous
14 business. You can't go in to commit a robbery or a
15 burglary and not expect that it's likely that someone
16 is going to be hurt.

17 It is worth noting, of course, that Smith didn't
18 tell the truth, and it's worth noting that the defense
19 in this case has the burden of proving this defense.
20 If you believe he is otherwise guilty of the Felony
21 Murder, you then have to take it to the next level and
22 say, you know what? I believe Tyreek Smith is probably
23 telling the truth before you can even consider this
24 defense.

25 Now, about the Premeditated Murder, we have to

1 show that on the day in question, the defendant or an
2 accomplice acted with intent to cause the death of
3 Ruben for Count 1 and Warren for Count 2. We know that
4 that is true for a number of reasons. We will talk
5 about that in a minute. We know that -- we have to
6 show that there is premeditation and that these victims
7 died as a result of the acts of the defendant or an
8 accomplice and that the acts occurred in the state of
9 Washington.

10 What evidence do we have of premeditation? There
11 has not been any testimony about, gee, we bought the
12 knife or we got the gun knowing that we were going to
13 go in and take a life. Well, that is not required to
14 demonstrate premeditation. What we do have is a
15 bringing of a knife. The question that you have to ask
16 yourself is, why bring a knife? You don't need it for
17 intimidation. You already have guns. In fact, you
18 have two of them, a .357 and an SKS. Why bring the
19 knife unless you intend to use it?

20 He did intend to use it. The advantage of the
21 knife over the gun is, a knife doesn't make noise.
22 Remember, Mr. Smith was concerned about noise. The
23 stereo gets turned up. It is something that is
24 weighing in the back of his mind. He doesn't want
25 anybody else to hear what is going on inside that

1 apartment. He brings a knife. The only reason that he
2 could have brought that knife, tucking it into his belt
3 loop, as if he intended to use it, because he didn't
4 need it for any other purpose.

5 Hitting Ruben on the head, now, remember, he is
6 going into this apartment -- Mr. Smith is -- knowing
7 full well that Ruben knows Jackson. It won't be hard
8 for Ruben to identify the people that did this to him.
9 If he wants to avoid the police being called because he
10 thinks that Ruben is not going to report his own
11 marijuana growing operation, he shouldn't be hitting
12 him on the head. The fact that he is hitting him on
13 the head tells you that he doesn't care if Ruben plans
14 to call the police or not. He has already made up his
15 mind. Ruben is going to die. We can antagonize him.
16 He can beat him. We can butcher him all we want. In
17 the end, he won't be left to tell the tale.

18 Again, when you plug this into the definition of
19 premeditation, you will notice that the word "plan"
20 does not appear in there, thought out beforehand. The
21 killing may follow immediately after the formation of
22 the settled purpose more than a mere moment in time.
23 There is evidence of premeditation, right there.

24 Tyreek Smith announces to Darrell Jackson in
25 Pierre Spencer's presence, hey, we can't leave any

1 witnesses. These guys recognize our face. They know
2 where we live. We can't leave any witnesses.

3 Now, it was right after Tyreek Smith said this
4 that you have the knock at the door that was Patrick
5 Baska. There is more than a mere moment in time that
6 transpires between Tyreek Smith announcing to the
7 others that they can't leave witnesses when he comes
8 back to finish the task that he has decided that he is
9 going to undertake.

10 When Tyreek Smith tells these other two that we
11 can't leave witnesses, it is one of the few true
12 statements that Tyreek Smith has ever made about what
13 happened that day. Tyreek Smith made a point of not
14 leaving witnesses. Tyreek Smith had settled on his
15 purpose, and he carried it out. The repeated stabbing
16 also is evidence of premeditation. If this had been
17 one or maybe even two stab wounds, it might be
18 reasonable to say, you know what? There was an intent
19 to kill, but thought beforehand, more than a mere
20 moment in time, at what point that you are stabbing
21 someone over and over and over and over and over again
22 has there been more than a mere moment in time? At
23 what point do you inflict wounds like this and you
24 haven't settled on your purpose? Tyreek Smith had
25 absolutely settled on his purpose. There can be no

1 doubt the number of wounds alone resolved that issue.

2 When Tyreek Smith is done stabbing Ruben, himself,
3 he is not content to leave it alone. He hands the
4 knife off to others. Why do you think he was doing
5 that? He wanted everybody to be involved in this just
6 as much as he was. He wanted everybody to be just as
7 legally guilty as he was. In for a penny, in for a
8 pound, right? So, he hands the knife off to others.
9 He had to have thought out at some point more than a
10 mere moment in time beforehand what he wanted the
11 others to do with the knife. Legally, that is
12 premeditation.

13 Well, the same thing applies for Warren's death.
14 Now, the interesting thing about Warren's death is
15 this, they didn't know that Warren was going to come
16 home. They went in, and they had the purpose, hey, we
17 are not going to leave any witnesses. Warren happens
18 to come home at the wrong place at the wrong time. It
19 is much like saying -- it is much like giving a gun to
20 someone and saying, hey, the next person that comes
21 around this corner, shoot them and kill them. You may
22 not know that anyone is going to come around the corner
23 much less who it is going to be. When they do, and you
24 take their life, it is no less thought out beforehand,
25 it is no less premeditated, because he didn't know for

1 sure who it would be, or if it would happen. The fact
2 of the matter is, they had more than a mere moment in
3 time to decide, hey, whoever is coming in here, whoever
4 is going to be a witness, they need to die. We can't
5 leave any witnesses. Again, the repeated stabbing of
6 Warren Abrazado is further evidence of premeditation,
7 not just the wounds to his throat, but the three wounds
8 that you see there to his back.

9 For all of those reasons, you know that each of
10 these defendants is also guilty of Aggravated Murder
11 and Premeditated Murder.

12 There are some aggravating factors that you have
13 been given instructions on as well. I submit that once
14 you determine these defendants are guilty of
15 Premeditated Murder, the aggravating factors, by common
16 sense, must apply.

17 Murder is committed to conceal the commission of a
18 crime -- burglary, robbery -- or to protect or conceal
19 the identity of any person committing the crime. More
20 than one person was murdered, and the murders are part
21 of a common scheme or plan. Again, pretty obvious.
22 Murder was committed in the course of, furtherance of,
23 or an immediate flight from Robbery in the First Degree
24 or Burglary in the First Degree. Again, the
25 aggravating factors are pretty obvious once it is

1 understood why they are guilty of the premeditated
2 murders.

3 A couple of notes about the phone records, there
4 is this call that you see in the phone records to
5 Ruben's voice mail at 2:08 in the afternoon from his
6 own cell phone. This was an extensive call. This went
7 on for a while. This is only minutes after Mr. Baska
8 left. I submit to you that it's not clear from the
9 evidence, but the inference you can draw from that --
10 what probably explains it is, they are calling -- they
11 are using Ruben's own phone to call his voice mail.
12 They are trying to delete the voice mail messages and
13 the call history. They are not sure if the phone is
14 ever going to be recovered or not. They are trying to
15 cover their tracks. In so doing, they are calling
16 Ruben's voice mail and deleting what evidence they can.

17 The call to Ruben's cell phone from the
18 Ramsey Larbi phone at 4:21, this is the one four
19 minutes before the call to Auntie Cheryl and
20 Uncle Corey, right? I submit to you that what is going
21 on here -- remember, they dropped the Isuzu Trooper off
22 at the Emerald Queen Casino. They come back to the
23 Sage Terrace Apartments, and they realize that they
24 left the gloves back at the crime scene.

25 I submit to you that what is going on here is

1 Tyreek Smith still has Ramsey Larbi's cell phone. He
2 also realizes, hey, we forgot to get Ruben's cell. He
3 is in the apartment, and he is calling Ruben's cell
4 trying to hear the ring, trying to figure out where it
5 is at. He eventually recovers it. That's why Ruben's
6 cell phone was also never found.

7 Stab wounds to Warren's back, I don't have an
8 explanation for you as to why those are.

9 Pierre Spencer didn't describe them. Spencer is going
10 up and down the stairs. He was going in and out of the
11 apartment. It's possible that before they left,
12 someone stabbed Mr. Abrazado again in the back. It's
13 also possible that Tyreek Smith did that when he
14 returned to get the gloves, but we will never know for
15 sure.

16 Now, you have been given an instruction on "a
17 reasonable doubt." A reasonable doubt is one for which
18 a reason exists and may arise from the evidence or lack
19 of evidence. I would submit to you that a reasonable
20 doubt is very much like a puzzle. Let's say, one day,
21 you are given a puzzle, and someone tells you, hey this
22 is a puzzle of downtown Portland. Someone else says,
23 it's downtown Seattle. Someone else says, no, it is
24 downtown Tacoma. You have no idea. You can't be
25 convinced beyond a reasonable doubt that it is any of

1 the three cities.

2 So, you start putting the pieces of the puzzle
3 together. You see a mountain. It kind of looks like
4 Mount Rainier. Maybe it is Mount Hood. You are
5 leaning towards Tacoma or Seattle, but you can't be
6 convinced beyond a reasonable doubt that it is not
7 Portland.

8 Some of the buildings start coming into focus.
9 You still don't know for sure which it is, but it is
10 starting to look a lot more like Tacoma or Seattle.
11 You still can't be convinced beyond a reasonable doubt.
12 You think that you probably know what it is.

13 You continue putting the puzzle together, and
14 there comes a point long before you have all of the
15 pieces, long before every piece is in place, long
16 before every question and every doubt is answered, and
17 as long as the right pieces of the puzzle are there,
18 you can be convinced beyond a reasonable doubt that
19 what you are really looking at is Seattle with Mount
20 Rainier in the background. And so it is with this
21 case, from there, you can fill in the rest of the
22 pieces.

23 You may have a question in the back of your mind
24 as to exactly who it was that plunged the knife over
25 and over and over and over again into Ruben or Warren.

1 In the end, it doesn't matter because you have the
2 right pieces of the puzzle. You have the accomplice
3 liability instruction. The right pieces of the puzzle
4 are there, and the case has been proved beyond a
5 reasonable doubt.

6 Where that leaves you, if you follow the Court's
7 instructions, we would urge you to return a verdict in
8 this case that represents the truth, that is, a verdict
9 to guilty of Count 1, Aggravated Murder; Count 2,
10 Aggravated Murder. We would urge you to return a
11 verdict that represents the truth, and that is a
12 verdict of guilty to Counts 3 and 4, Murder in the
13 First Degree, the Felony Murder; and, finally, we're
14 urging you to return a verdict of guilty as charged to
15 the Burglary and Robbery as well.

16 Thank you.

17 THE COURT: Ladies and gentlemen, we are going to
18 take a recess now for about 15 minutes, and then you
19 will come back and hear the closing argument of defense
20 counsel. Please do not discuss the case.

21 Thank you very much.

22 (Off the Record - Recess.)

23 THE COURT: Welcome back, everyone. Please be
24 seated.

25 Are we ready for the jury?

1 MR. COSTELLO: Yes.

2 MR. NESS: Yes.

3 THE COURT: Great. Mrs. Winnie.

4 (Whereupon, the following
5 proceedings were held in the
6 presence of the jury).

7 THE COURT: Welcome back, everyone. Please be
8 seated.

9 Ladies and gentlemen, now please give your
10 attention to the closing argument on Mr. Thomas Weaver,
11 Junior, on behalf of the defendant, Tyreek Deanthony
12 Smith.

13 Mr. Weaver.

14 MR. WEAVER: Thank you, Your Honor.

15 I'm a movie fan. I love movies. This is a good
16 time to be a movie fan. I'm sure that many of you
17 watched the Academy Awards a couple of days ago. There
18 were 24 films in the major categories ignoring all of
19 the documentaries and the short film. I saw 16 of
20 them. I had some pretty strong opinions, and I
21 actually was pretty pleased with the Academy Award
22 results.

23 I want to talk about one of the films that had a
24 lot of nominations, but didn't win any awards briefly.
25 That movie is "Doubt." It got five nominations. The
basic plot of "Doubt" involves a Catholic priest who

1 comes under some suspicion that he may have molested a
2 child in the Catholic school where he works. He is
3 accused by the nun, slash, principal of the school, who
4 is played by Meryl Streep. Both Meryl Streep and
5 Philip Seymour Hoffman, who plays the priest, both
6 received Academy Award nominations.

7 Those of you who have seen the movie, there is
8 really no resolution in the movie. You never really
9 find out if he did it or not. You walk out of the
10 movie theater and you turn to your family member, your
11 spouse, or whoever you are with, and you say, "So, what
12 do you think? Did he do it or not?" You never really
13 know. I have talked to several people that have seen
14 the movie that are convinced that he is guilty. I have
15 also talked to several people that are convinced that
16 he didn't do it. Ultimately, you guys are in kind of
17 that situation.

18 None of you were there on September 22nd. You
19 don't know what happened. You all have your doubts.
20 You know, there is a phrase in the movie "Doubt" that
21 keeps coming up over and over again. Meryl Streep says
22 it several times. She says, "The opposite of "Doubt"
23 is "certainty." I am asking you at this time to ask
24 yourself, what do you know with certainty about what
25 happened on September 22nd? Anything you don't know

1 with certainty is something that you have a doubt
2 about.

3 Now, you have a jury instruction that talks about
4 doubt. It says that the defendant is presumed innocent
5 unless you are convinced of his guilt beyond a
6 reasonable doubt. So, when you go back into that jury
7 room, the first thing that you should be asking
8 yourself is, what are my doubts? And then taking that
9 same jury instruction, it talks about what a reasonable
10 doubt is. A reasonable doubt is one for which a reason
11 exists. You ask yourself, is this a doubt for which a
12 reason exists? Because the presumption of innocence
13 requires that you give all doubts to the defendant. If
14 those doubts are reasonable, the presumption of
15 innocence requires you to find the defendant not
16 guilty.

17 You guys are a lot like the movie-viewers in
18 "Doubt." You are not going to know for sure whether
19 you will reach the right verdict. There is no way that
20 you will ever know at least as far as what the factual
21 scenario -- what really happened is. You can have
22 certainty as to the legal result. You can know,
23 working as a collective of 12 people, you can know
24 whether you have resolved all of your doubts to the
25 point where they are no longer reasonable doubt. If

1 you have reasonable doubts, you can find the defendant
2 not guilty. If any of your doubts are reasonable
3 doubt, any of your doubts are a reason which -- if any
4 of those are doubts which a reason can be given, your
5 legal obligation is clear.

6 The word "duty" appears over and over again in the
7 jury instructions. It appears twice in the very first
8 paragraph of Jury Instruction No. 1. You have a duty
9 to decide the facts. You have a duty to accept the
10 law. You have a duty, and your duty is to review these
11 facts in light of the doubts that I know that you will
12 have and to evaluate those facts, to determine their
13 reasonableness. If you have a reasonable doubt, your
14 duty is clear. You write the words "not guilty."

15 Now, what I want to do -- my closing arguments can
16 be divided into three basic sections. I'm going to
17 give you a general overview of some legal concepts and
18 terms. I have actually started doing that. Then, I'm
19 going to spend the rest of share of my argument talking
20 about the facts because you have heard three weeks of
21 testimony, and you need to sift those down into what is
22 important. And then, finally, I'm going to talk about
23 how you apply those facts to the law. You have gotten
24 a big packet of Jury Instructions. What is it? 40
25 jury instructions? 39? Something like that. You have

1 heard them once very quickly from the Judge yesterday.
2 It is not easy to sift this out. I'm going to try and
3 help you out.

4 I talked to you about your duty. You have a duty
5 to accept the law regardless of what you believe the
6 law is or ought to be. I talked to you about this
7 during jury selection. I told you there were going to
8 be some legal concepts that you may not necessarily be
9 comfortable with. As we go along, I may hit upon a
10 couple of those.

11 Each of you took an oath. You took two oaths. At
12 the beginning of this trial, you took an oath to answer
13 questions honestly during the jury selection process.
14 That's how we got to you 14 in this box. And then
15 after you got in the box, you took a second oath, that
16 you were going to decide this case based upon the
17 evidence and accept the law from the Judge.

18 Now, I know when you guys get back into your homes
19 after this trial is over, you're going to be scratching
20 your heads over some of these things. You may have
21 questions for me afterwards. I have had jurors tell
22 me, I still don't understand this concept. You are not
23 legal scholars today. You are not trying to resolve
24 all of the issues of the world. You are trying to
25 decide one case. Your role is to apply the law.

1 Tyreek Smith, of course, is presumed innocent and proof
2 must be beyond a reasonable doubt. A reasonable doubt
3 for which a reason exists.

4 I have talked about your duty to accept the law.
5 You also have a duty to decide the facts. You are the
6 decider of the facts. You decide what is true and what
7 is not true. The Judge has given you several things
8 that you can consider in making that determination. Of
9 course, most of the testimony that -- most of the
10 evidence that you have heard comes from the witness
11 stand. People have come in here, sat in this chair,
12 and taken an oath to tell the truth. It is your
13 decision to decide if they have followed through on
14 that oath. You also have some exhibits. You will be
15 able to take those exhibits back into the jury room and
16 look at them.

17 Regarding the witnesses who took the stand, the
18 Judge, like I said, has given you several guidelines.
19 These are not hard and fast guidelines. You can use
20 criteria you want to determine the credibility of the
21 witnesses. Things that you should consider, the
22 opportunity of the witness to know the things that he
23 or she is testifying about; the ability of the witness
24 to observe accurately; the quality of the witness's
25 memory while testifying. I'm going to stop here for a

1 second.

2 You have heard from several witnesses in this
3 case: Sharon Lightner, Natausha Sabin-Lee,
4 Patrick Baska. The way that they sat called into
5 question their credibility.

6 The quality of the witness's memory while
7 testifying. When Pierre Spencer says, I don't recall.
8 How many times did he say, "I don't recall, sir. I
9 don't recall, sir"? I almost wished that I kept a
10 little tally.

11 The manner of the witness while testifying. Any
12 personal interest that the witness may have in the
13 outcome. We will talk about Pierre Spencer on that one
14 in particular.

15 Any bias or prejudice that the witness has shown.
16 We have heard from a lot of people. Some of them are
17 friends of Mr. Smith and Mr. Jackson. Some of them are
18 friends of Mr. Doria and Mr. Abrazado. Those are
19 biases.

20 The reasonableness of the witnesses statements in
21 the context of other evidence. You don't have to take
22 the witnesses' statements at face value. You can
23 dovetail those statements with everything else that you
24 heard in order to determine whether that witness is
25 credible.

1 You know, we have a timeline here. Our essential
2 timeline is about 24 hours on the 21st and 22nd of
3 September. You didn't hear from any witness who knew
4 all of the facts about what happened in that 24-hour
5 period. Every witness came in and gave you just a
6 little piece. The prosecutor calls it a puzzle. In a
7 sense, that's right. You have a little piece of the
8 timeline. No one witness knows the entire timeline.
9 You have that advantage. You can apply that.

10 A couple more legal concepts. You have in this
11 case, essentially, three potential eyewitnesses to the
12 crime. You have Pierre Spencer whom you heard from;
13 you have Darrell Jackson; and Tyreek Smith, both of
14 them are sitting in front of you. You have potentially
15 three eyewitnesses to the crime.

16 Now, each of those three people has given you
17 information, but it has come about -- the information
18 that you have gotten from those three people has
19 differed in significant ways. The ways that you
20 receive the information affects not just how you
21 perceive it, but it affects how the law treats it.

22 Let's talk about Tyreek Smith's statements. First
23 of all, let me talk about the fact that he did not
24 testify. We talked about this in jury selection. This
25 is one of those legal concepts that some people are not

1 comfortable with, but it is a duty of yours that you
2 have to accept the law. This is something that the
3 Judge has told you. The defendant is not required to
4 testify, and you may not use that fact to prejudice the
5 defendant in any way. You can't consider it. You
6 can't discuss it. When you get back there, it cannot
7 be a factor in your deliberations at all.

8 However, you did hear through the detectives,
9 Detective Davis, Detective Turner -- you did hear
10 statements that Mr. Smith made when he was arrested on
11 January 16th and 17th. The Judge has given you an
12 instruction that says you can give such weight and
13 credibility to those statements as you see fit. In
14 other words, it's as if he testified. You could decide
15 whether it is credible or not credible. You are
16 weighing his testimony the same as if he got on the
17 witness stand.

18 Darrell Jackson's statements are even more
19 difficult for you. I don't envy your task in this
20 case. You have two jury instructions that deal
21 directly with the issue of what to do with Darrell
22 Jackson's statements. First of all, you have an
23 instruction that says a separate crime is charged in
24 each count, and you must decide each count charged
25 separately against each defendant. You have six counts

1 on Tyreek Smith and six counts on Darrell Jackson. You
2 have to make 12 decisions. It's actually more
3 decisions than that if you count the aggravating
4 circumstances and the deadly weapon enhancement and the
5 firearm enhancement. If you start counting how many
6 decisions you have to make, you are making a lot. Each
7 decision you make has to be made separately. It has to
8 be made unanimously. A jury acts only as a unit of
9 one. You are 12 equal parts of a whole. If your vote
10 is 11 to 1, you don't have a verdict. You have
11 nothing. 11 to 1 equals nothing.

12 Now, the next instruction is going to be maybe
13 your hardest task as far as intellectual thought. You
14 may consider a statement made out of court by one
15 defendant as evidence against that defendant, but not
16 as evidence against another defendant.

17 So, you heard yesterday some statements that
18 Darrell Jackson has alleged to have made to law
19 enforcement. You also heard from Detective Davis and
20 Detective Turner about some statements alleged to have
21 been made by Tyreek Smith.

22 When you go back into the deliberation room, when
23 you are discussing Tyreek Smith, it is as if Darrell
24 Jackson didn't say anything. You cannot discuss what
25 Mr. Jackson said to law enforcement when you are

1 discussing Tyreek Smith. The reverse is also true.
2 When you are discussing Tyreek Smith -- I'm sorry, when
3 you are discussing Darrell Jackson, you cannot consider
4 what Tyreek Smith told to law enforcement. It is
5 almost like you are two separate juries.

6 I would suggest to you, recommend to you --
7 ultimately, how you guys deliberate is up to the 12 of
8 you. I would recommend to you that you try and make a
9 clear division in your deliberations. For the next
10 30 minutes, we are only going to discuss Tyreek Smith.
11 We are not going to discuss Darrell Jackson at all. In
12 30 minutes, we will switch it up, whatever. Otherwise,
13 you are going to start intermingling the evidence.

14 I have emphasized to you from the first moment
15 that I met you that you have to accept the law
16 regardless of what you believe that the law is or ought
17 to be. This is something that you have to accept, that
18 what Darrell Jackson said to law enforcement cannot be
19 used against Tyreek Smith. What Tyreek Smith said to
20 law enforcement cannot be used against Darrell Jackson.
21 You are like a jury of 24 instead of a jury of 12.

22 Another legal concept, Premeditation.
23 "Premeditation" means thought over beforehand. This
24 applies to Counts 1 and 2. Both defendants are charged
25 with Premeditated Murder of Mr. Doria and Mr. Abrazado.

1 By the way, you have heard us refer to the phrase
2 of "aggravated murder." They are actually charged with
3 First Degree Premeditated Murder with Aggravating
4 Circumstances, which is really a long phrase. We
5 sometimes shorten it to Aggravated Murder, but the
6 technical name of the crime is the long one. It is
7 First Degree Premeditated Murder with Aggravating
8 Circumstances. You can theoretically find that it was
9 Premeditated Murder without Aggravating Circumstances.
10 When you are back there deliberating on Premeditation,
11 you have to decide independently as to Mr. Smith and
12 Mr. Jackson, what did they do, what did they
13 premeditate, what was their deliberative process. You
14 have a jury instruction that defines that.

15 The next concept that I'm going to discuss with
16 you is "accomplice liability." I suspect that you are
17 going to read this instruction several times back in
18 the deliberation room because a lot of what is going on
19 here depends on who is an accomplice and what they are
20 an accomplice to. I want to comment on the word "the."
21 You'll notice that I put it in bold and underlined and
22 all capitalized because I can't tell you -- I said you
23 are not legal scholars. A lot of legal scholars have
24 put a lot of -- have killed a lot of trees talking
25 about the word "the" in this instruction. The word

1 "the" is very important in this instruction. A person
2 is an accomplice to a crime if, with knowledge that it
3 will promote or facilitate the commission of the crime,
4 that he either solicits, commands, encourages, or
5 requests another person to commit the crime or aids or
6 agrees to aid another person committing the crime.

7 You are an accomplice to a crime when you
8 knowingly are an accomplice to the crime. A person is
9 not a general accomplice. You can't just run around
10 out there and say, you know, that is a good idea.
11 Robbery is a good idea. We should rob somebody. You
12 can't be an accomplice to a general idea. You have to
13 be an accomplice to the specific crime that you are
14 being charged with.

15 Robbery in the First Degree and Burglary in the
16 First Degree, these two charges -- by the way, I agree
17 with something that Mr. Blinn said. He suggested to
18 you that it might make sense to work backwards through
19 the charges, to start with either robbery or burglary,
20 and then work backwards. I agree with him.
21 Conceptually, that makes sense. When you go back
22 there, assuming that you follow the invitation of both
23 of us, and you talk about this legal concept of First
24 Degree Robbery and First Degree Burglary, you are going
25 to notice something important about these two charges.

1 They both require a deadly weapon.

2 Now, First Degree Robbery can be charged -- you
3 can find it three ways, that the accomplice was armed
4 with a deadly weapon, or the accomplice displayed what
5 appeared to be a firearm or deadly weapon, or that the
6 accomplice inflicted bodily injury.

7 Now, why do I point that out? First Degree
8 Robbery has a nickname in colloquial speech. It's
9 sometimes called armed robbery because it does require
10 some form of either weapon or injury. First Degree
11 Burglary also has a nickname. It could either be
12 called armed burglary -- it actually more often goes by
13 the nickname strongarm burglary -- you may have heard
14 that phrase -- because, again, it requires a deadly
15 weapon.

16 Now, I want to back up. The crime here, if we are
17 trying to decide whether Mr. Smith is guilty of First
18 Degree Robbery or First Degree Burglary, the crime --
19 let's just talk about robbery for a second.. The crime
20 is armed robbery.

21 MR. COSTELLO: Objection. That is a misstatement
22 of the law. The crime is Robbery.

23 MR. WEAVER: Robbery in the First Degree.

24 THE COURT: The crime is Robbery.

25 MR. WEAVER: Your Honor, I would like to have the

1 jury excused.

2 THE COURT: Ladies and gentlemen, please excuse us
3 for a few minutes. Do not discuss the case.

4 (Whereupon, the following
5 proceedings were held outside
the presence of the jury.)

6 MR. WEAVER: Your Honor, I would note the time is
7 11:24. I'm wondering if we should send the jurors to
8 lunch.

9 THE COURT: Well, we can, but you wanted to
10 discuss this first.

11 MR. WEAVER: I do want to discuss it, but I guess
12 I'm wondering -- I know that we have a juror that needs
13 to be somewhere at 11:30. I guess it is up to the
14 Court.

15 Your Honor, the way the charging document is
16 charged, my client is charged with being an accomplice
17 to the crime of First Degree Robbery. He is not being
18 charged with being an accomplice to Second Degree
19 Robbery or general robbery, nor under the Felony Murder
20 crime is he being charged with general robbery. He is
21 being charged with being an accomplice to a First
22 Degree Robbery that in the course of or furtherance, of
23 someone died.

24 I believe it's a correct statement of the law,
25 given the instructions that this Court has given that

1 my client cannot be convicted if he is only an
2 accomplice to the general crime of robbery. He must be
3 an accomplice to the crime of First Degree Robbery,
4 which requires either that he be armed with a deadly
5 weapon, displaying what appears to be a firearm or
6 deadly weapon, or caused bodily injury. That is what
7 the instructions that this Court has given are. That
8 is a correct statement of the law, and that's what I
9 intend to argue to this jury. It is not enough that he
10 is a general accomplice to a robbery.

11 THE COURT: Well, as we talked at some length
12 about this both off the record and yesterday when we
13 were talking about exceptions, the State has to prove
14 beyond a reasonable doubt that the defendant had
15 general knowledge that he was aiding in the commission
16 of the crime, not all of the elements of the crime, or
17 personally acted within the elements of the crime. The
18 crime we are talking about is robbery.

19 MR. WEAVER: I disagree.

20 THE COURT: Not Robbery in the First Degree.

21 MR. WEAVER: The crime is First Degree Robbery. I
22 believe if the Court restricts my closing argument, I
23 believe that essentially means that when -- here's the
24 problem under the facts of this case. My client -- if
25 we assume that his confession is correct, his statement

1 is correct, he helps to plan a robbery. He goes to the
2 7-Eleven and is present when a phone card is purchased.
3 Then, the discussion turns to guns and violence. At
4 that point, he says he wants out and he walks away.

5 If the Court sustains the State's objection and
6 allows the State to incorrectly argue that because my
7 client helped to plan and encourage a robbery, even if
8 he didn't have any intention of anything involving guns
9 or violence to take place, then he is guilty, not only
10 of First Degree Robbery and First Degree Burglary, but
11 of Felony Murder. That is not a correct statement of
12 the law. He has to be an accomplice to the crime. We
13 have talked about Roberts and Cronin repeatedly in this
14 case, both on and off of the record. I think, if the
15 Court sustains the objection, we are in the exact same
16 problem that got Cronin reversed.

17 THE COURT: I don't think so. In that case, it
18 was a crime.

19 MR. WEAVER: Except though -- even though the
20 Court has properly instructed the jury on the crime, it
21 is telling me that I can't argue "the." I have to
22 argue "a." The fact that --

23 THE COURT: No. You have to argue the crime of
24 robbery, not just any crime.

25 MR. WEAVER: It is Robbery in the First Degree.

1 That is what he's charged with. That's what the
2 information says. That is what the jury instructions
3 say.

4 THE COURT: Right. In order to be guilty as an
5 accomplice, he has to participate in the crime of
6 robbery or aided or solicited.

7 MR. WEAVER: I completely disagree with the Court.

8 THE COURT: Well, that's my ruling.

9 MR. COSTELLO: Your Honor, I would urge the Court
10 to instruct Mr. Weaver further that he is not to
11 contend that it is the crime of First Degree Burglary
12 or the crime of Premeditated First Degree Murder, which
13 I'm confident that he wants to argue to the jury.

14 Mr. Weaver seems to understand the law better than
15 the State's Supreme Court, at least he would have this
16 Court believe that. The crime is Burglary, Robbery,
17 Murder, not the elements of Murder that would elevate
18 it to First Degree Murder. I may admire Mr. Weaver's
19 persistence, but he is misleading this jury, or trying
20 to.

21 MR. WEAVER: I'm just telling the jury what the
22 Supreme Court said in Cronin and Roberts.

23 THE COURT: Well, we disagree about that. Anyway,
24 I have made my ruling. I will sustain the objection.

25 Meantime, since it is now like 11:29, we will

1 break at this point and allow the jurors to take their
2 lunch break and be back at 1:30. We will be at recess
3 until then.

4 (Off the Record - Recess).

5 THE COURT: Welcome back, everyone. Please be
6 seated. Are we ready for the jury?

7 MR. NESS: Yes.

8 MR. WEAVER: Yes.

9 THE COURT: Great.

10 Let's have the jury, Mrs. Winnie.

11 (Whereupon, the following
12 proceedings were held in the
presence of the jury).

13 THE COURT: Good afternoon, everyone. Welcome
14 back. Please be seated.

15 The objection is sustained.

16 Mr. Weaver, please continue when you are ready.

17 MR. WEAVER: Thank you, Your Honor.

18 I'm going to be moving at this time to the facts
19 of the case. Before I move on, just to complete my
20 thoughts regarding the accomplice liability
21 instruction, you do have an instruction in your
22 packets, Instruction No. 10, that contains a full
23 statement of what accomplice liability is. I would
24 encourage you to read it and discuss it during your
25 deliberations.

1 I would also note that as to Counts 5 and 6,
2 Mr. Smith is charged with First Degree Robbery and
3 First Degree Burglary. You have definitions of those
4 crimes. You are going to have to deliberate on the
5 question of whether you believe the facts support that
6 Mr. Smith was or was not an accomplice to either First
7 Degree Robbery or First Degree Burglary.

8 Let's talk about the facts. I have put a question
9 up here, has the State proved beyond a reasonable doubt
10 that Tyreek was -- Tyreek Smith was inside the
11 apartment on September 22, 2007? Now, the reason I put
12 that question up -- you won't find that question
13 anywhere in your jury instruction packet. I'm going to
14 submit to you that this factual question -- it actually
15 is a combined question of law and fact, but this
16 factual question is the question upon which all of the
17 other instructions turn. How you answer this question
18 will determine what you do with the rest of the
19 instructions. If you don't believe me, believe
20 Mr. Blinn because I was listening to Mr. Blinn's
21 closing argument. Mr. Blinn's closing argument was
22 65 minutes long. He spent 40 of those 65 minutes
23 talking about the facts. Of those 40 minutes, he spent
24 35 minutes talking about this question. He spent five
25 minutes on Mr. Jackson, total, in his factual part of

1 his closing. He spent 35 minutes trying to answer this
2 question. This is the big question factually in this
3 case, was Mr. Smith inside the apartment -- and, here,
4 I'm referring to Mr. Doria's apartment, obviously -- on
5 September 22, 2007?

6 Let's start with some easy things. There was
7 nothing forensically or physically that ties him to the
8 apartment. We have no fingerprints. We have no DNA.
9 We have no eyewitnesses other than arguably
10 Mr. Spencer. I'm going to spend quite a bit of time
11 talking about Mr. Spencer. We have no murder weapons.
12 You have some exhibits in this case. There are no
13 knives. There are no guns. You have no computer. You
14 have no safe. You don't have any physical evidence
15 that ties Mr. Smith to what happened inside the
16 apartment on September 22nd.

17 Now, you have, basically, two versions of the
18 facts that you can consider in determining Mr. Smith's
19 guilt. I say two versions because keep in mind, you
20 cannot consider Mr. Jackson's version of the facts when
21 you are considering Mr. Smith's guilt. What is
22 Mr. Smith's statements? What is the basic plan that
23 Mr. Smith outlined to the police when he was arrested
24 on January 16th and January 17th, 2008?

25 He told them that on Friday night, the 21st,

1 before the homicide happened, that they had talked
2 about doing a lick. He described them rolling around
3 the Blazer. He told him that the initial plan was for
4 them to go into the apartment to buy some marijuana.
5 One of them was going to bust in and rob all of them to
6 make it look good. He said that this conversation took
7 place at the 7-Eleven on the corner of 92nd and South
8 Tacoma Way. He said that the other people purchased a
9 20-dollar phone card for a Virgin mobile phone. This,
10 of course, is the presumably the Doroteo Arango phone
11 that you've heard so much about. This is what he told
12 the police. This is his -- the basic scenario that he
13 outlined to them.

14 Now, at this point, you should be asking yourself
15 a couple of questions. You should be asking yourself,
16 did Mr. Smith, by discussing this plan, by discussing
17 this robbery, or this lick, by being present when the
18 phone card was purchased, was he soliciting,
19 commanding, encouraging, or requesting another person
20 to commit the crime of robbery on September 21st or, in
21 the alternative, did he aid or agree to aid another
22 person in planning or committing the Robbery on
23 September 21st?

24 Now, keep in mind that on September 21st, there
25 was no robbery. There was some discussion of robbery.

1 According to Mr. Spencer, some people drove over to do
2 a robbery. According to Mr. Spencer, Mr. Jackson went
3 into Mr. Doria's apartment. Instead of a robbery, he
4 purchased marijuana and walked out. Does what happened
5 on September 21st, when there was no robbery, does
6 Mr. Smith's discussions with the others, does his
7 purchase of the phone card on the 21st, does that make
8 an accomplice to what happens on the next day, on
9 September 22nd?

10 Let's go back to Mr. Smith's statements to law
11 enforcement. Mr. Smith went further and he said that
12 there was some discussion that one of them might have
13 to be hit with the gun to make it look believable.
14 Once Mr. Smith heard the plan, specifically about
15 getting hit with a gun, he told them that he, quote,
16 wanted out. He walked back to the apartment while the
17 others went to do the lick. Again, this is Friday
18 night, not Saturday. Friday, very late. Arguably, it
19 is early morning, Saturday morning. This is the night
20 that a robbery did not take place.

21 Now, you, again, should be asking yourself some
22 questions. Does the fact that Mr. Smith said that he
23 wanted out and walked home, does that somehow stop him
24 from any further accomplice liability? Again, no
25 robbery took place on the 21st. Can Mr. Smith be an

1 accomplice to the crimes of robbery and burglary when
2 he wanted out of anything to do with guns and violence,
3 you know? His discussion was stealing marijuana. We
4 have heard evidence that he smoked marijuana. Almost
5 all of the participants smoked marijuana. Of course,
6 Mr. Spencer said that he doesn't. Does the fact that
7 he was okay with stealing marijuana, does that make him
8 an accomplice to what happens later where guns get
9 involved, where violence gets involved, and,
10 ultimately, where death gets involved?

11 Question, where did Mr. Smith spend Saturday
12 night? According to Mr. Smith, he went to Sharon
13 Lightner's apartment on Saturday. He heard the Blazer
14 pull up because the Blazer had a loud muffler. I'm
15 going to stop for a second.

16 You heard Mr. Spencer say that he owns a Blazer,
17 and he confirmed that, yes, it has a very loud muffler.

18 Continuing with Mr. Smith, Mr. Smith looked out
19 the kitchen window from Lightner's apartment, confirmed
20 that it was the Blazer. The Blazer made a right-hand
21 turn on South Tacoma Way at approximately between 10:00
22 and 11:00 when they left in the Blazer. Mr. Smith
23 spent the night Saturday night in Lightner's apartment
24 with her roommate, Chenelle Williams.

25 Let's go back to Sharon Lightner's testimony. I

1 will concede that Ms. Lightner was not the most lucid
2 witness that you heard from. However, she did describe
3 a day in late September, definitely after Labor Day and
4 definitely after her conversation with Mr. Smith where
5 he told her that he was going to be coming into some
6 weed. On a day soon thereafter, which, although she
7 can't say the exact day, Mr. Smith came over and was
8 acting very strange. He kept looking out the window,
9 going to the window and looking to see what was going
10 on. On that same night, he spent the night in the
11 room, the bedroom, of Chenelle Williams.

12 Now, can I prove to you that this is the same day?
13 No, I can't. Ms. Lightner was, like I said, not one of
14 the most credible witnesses that you ever heard.
15 However, keep in mind, I don't have to prove anything
16 to you. Mr. Smith doesn't have to prove anything to
17 you. The State has to prove his guilt beyond a
18 reasonable doubt. Is there a doubt for which a reason
19 can be given that Mr. Smith told the truth when he said
20 that he spent Saturday night in Ms. Lightner's
21 apartment?

22 Let's talk about the phone records. First of all,
23 the State is relying very heavily on the fact that
24 there are some phone calls done on the Pancho Villa
25 phone that would not be, in any realistic sense, made

1 by anyone other than Mr. Smith. Who other than
2 Mr. Smith is going to call his uncle in Georgia? Who
3 other than Mr. Smith is going to call his aunt in
4 Georgia? To a lesser degree, but still relatively
5 persuasive, who other than Mr. Smith is going to call
6 Ms. Sabin-Lee, his on-again/off-again girlfriend.

7 Mr. Smith concedes that he made phone calls on
8 that phone. The reason is because normally he would
9 use Ms. Sabin-Lee's phone. On this particular day,
10 Ms. Sabin-Lee had the phone. He was using a borrowed
11 phone. Who did he borrow it from? Either Mr. Jackson
12 or Mr. Spencer.

13 Why was he making phone calls? Well, in part, it
14 was to keep in touch with Ms. Sabin-Lee. Also, he was
15 planning at that point in time to make a return trip
16 permanently to Georgia. Who is he going to talk to in
17 order to do that? He is going to talk to his relatives
18 in Georgia. More importantly, Mr. Smith told the
19 police, quote, I used the phone before he left and when
20 he got back.

21 Now, we know that the robbery starts at 1:52. Do
22 we know -- we don't "know" know, but we know that. All
23 of the circumstantial evidence indicates that the
24 robbery happened at 1:52. That is the last phone call,
25 six-second call, made from Pancho Villa phone to

1 Mr. Doria. I would submit to you -- and I don't think
2 that the State is going to disagree -- it was probably
3 a phone call from whoever had possession of the phone
4 to say, hey, we are downstairs. Come let us in.

5 Now, the last phone call that can be, clearly,
6 attributed to Mr. Smith happens on the Pancho Villa
7 phone is at 1:16 p.m. It was a phone call made to
8 Ms. Sabin-Lee. I'm going to concede that more likely
9 than not, that phone call came from Mr. Smith.

10 The next phone call that can be clearly attributed
11 to Mr. Smith comes three-and-a-half hours later at
12 4:26 p.m. to Georgia, his uncle. We have a
13 three-and-a-half-hour gap where there are no phone
14 calls where the State can attribute them to Mr. Smith.
15 Further, Mr. Smith admitted to police that, yes, he had
16 called his uncle, Corey Smith, after the others
17 returned back. When Mr. Smith says, I used the phone
18 before they left and after they got back, that is
19 consistent with the phone record that you have.

20 I found this picture of Pancho Villa. I thought
21 that it was humorous.

22 Let's talk about what happened to the marijuana.
23 Again, we are talking about what Mr. Smith told the
24 police. He said that on Sunday, the 23rd, he returned
25 to four or five weed plants in the apartment. Well, I

1 would submit to you that is consistent with what
2 Bobby Simmons said. Mr. Blinn, in his closing
3 argument, speculated that Bobby Simmons must have seen
4 the marijuana on Saturday. There is absolutely no
5 evidence that he saw marijuana on Saturday. He had to
6 have seen the marijuana after, of course, Saturday
7 evening, but I would submit that it is absolutely
8 consistent that Mr. Simmons saw the marijuana either on
9 Sunday or even Monday or Tuesday. Regardless,
10 Mr. Smith admits knowing that the weed plants were
11 inside the apartment as of Sunday, the 23rd.

12 Mr. Smith was also asked about what happened to
13 the marijuana plants, and he told the police that he
14 thought his homeboy, Phaze, took the plants to someone
15 in Seattle that knew how to grow them. Well, he got it
16 a little bit wrong, but not significantly.

17 According to Brian Moore, who says that he goes by
18 the alias of Phaze, he did, in fact, receive marijuana
19 plants from Mr. Jackson. He admits he didn't know how
20 to grow them, and they died in his presence. Mr. Smith
21 got it slightly wrong. He got the significant part
22 right. The marijuana plants were transferred to Phaze
23 and that no one knew how to cultivate them. Again,
24 consistency in Mr. Smith's statement.

25 Now, the State makes much of the fact that

1 Mr. Smith made some alleged admissions regarding this
2 lick. There are three people that they point to
3 because they concede that Mr. Smith didn't admit doing
4 the lick to the police, so they have to find someone
5 else that he's made a confession to. They don't have a
6 confession to the police. They have three people that
7 they claim he made a confession to.

8 The first one is Sharon Lightner. According to
9 Sharon Lightner, Mr. Smith stated to her that he was
10 going to come into some weed. It was a statement of
11 future intent. Well, that is consistent with what he
12 told the police. He had no problem with stealing
13 marijuana. That's not the problem. He had the problem
14 with the guns and the violence. The fact that he told
15 Ms. Lightner that he was going to come into some weed
16 into the future is entirely consistent with what he
17 told the police.

18 We've got Bobby Simmons. Again, Bobby Simmons
19 observed weed plants inside of the apartment sometime
20 after Saturday, maybe Sunday, Monday, Tuesday. We
21 don't know exactly when. Again, this is consistent
22 with what Mr. Smith told the police. He knew that
23 there were marijuana plants there because he saw them
24 when he got back home on Sunday.

25 I want to make a brief comment about this alleged

1 statement that you heard from Detective Turner. Keep
2 in mind that Bobby Simmons was interviewed in January
3 of 2008. I don't recall the exact date, but I'm sure
4 it is in your notes. According to Detective Turner,
5 Mr. Smith made a statement that they went and robbed
6 some plants. Well, again, this is one of those
7 principles where you have to rely on the law. The
8 Judge told you when that statement came in that you
9 could not consider that statement for its truth. The
10 reason is because Mr. Simmons now doesn't -- he doesn't
11 (a) remember making that statement to the police and,
12 more importantly, he doesn't remember Mr. Smith making
13 the statement to him. I would submit to you that that
14 statement should not be considered by you for any
15 reason other than to assess Mr. Simmons' credibility,
16 which his memory was a little fuzzy anyway.

17 Finally, we have the Sabin-Lee statement.
18 According to Ms. Sabin-Lee, Mr. Smith called her. We
19 don't know the exact date. The State speculates, and
20 it's total speculation, that this phone call is the
21 1,052-second phone call that happened approximately
22 5:30 on the 22nd. I would submit to you that it didn't
23 happen during that phone call. Why do I say that?
24 Because Ms. Sabin-Lee asked a question to Mr. Smith
25 during the phone call. She said, does this have

1 anything to do with what happened on Hosmer? What
2 happened on Hosmer, of course, is Mr. Doria's death.

3 On the evening of the 22nd, no one knew that
4 Mr. Doria and Mr. Abrazado were dead. No one knew that
5 until the evening of the 23rd when his friends went
6 over to check on his welfare because he didn't show up
7 for the birthday party.

8 If Ms. Sabin-Lee is correct and during this
9 conversation she asked him about what happened on
10 Hosmer, the earliest that this phone call could have
11 happened would have been Sunday evening, but more
12 likely, Monday or Tuesday. We also have
13 Ms. Sabin-Lee's statement that we hit a lick. She
14 couldn't remember his exact words. Her memory was very
15 fuzzy. I would note a couple of things about this
16 sentence.

17 First of all, the word "we," it rhymes with "D."
18 it rhymes with "he." You know, this is a conversation
19 that is taking place on a cell phone. I know I have
20 been watching -- most of you carry around cell phones.

21 (Cell phone rings.)

22 MR. WEAVER: That wasn't very good timing; or,
23 maybe it was good timing. I don't know.

24 I carry around two cell phones: One for personal
25 and one for work. I live and die by the cell phone. I

1 know most of you do as well. I will tell you this, if
2 I have one cell phone talking to another cell phone --
3 if I call my wife on her cell phone, half of the time I
4 can't understand her. She breaks in and out.

5 The State is asking you to convict Mr. Smith of
6 very serious crimes based upon the fuzzy memory of
7 Ms. Sabin-Lee and what she may or may not have heard on
8 either September 22, 23, 24, 25, who knows. I would
9 submit to you that Ms. Sabin-Lee is not helpful to your
10 analysis at all.

11 Let's talk about Mr. Spencer. I told you that his
12 testimony would be incredible. You have heard from him
13 now. Who is Mexico, really? First of all, let's talk
14 about his nickname. He claims that he doesn't go by
15 the nickname of Mexico. Yet, you've heard at least two
16 witnesses and possibly more. Ms. Sabin-Lee and
17 Brian Moore both told you that that is the only name
18 that they knew him by. You also heard from
19 Detective Davis that he admitted to Detective Davis
20 that that is the nickname that he goes by. Mr. Spencer
21 tells an incredible tale.

22 I found these books on Amazon, "Mystery in
23 Mexico." I liked the one at the top, "An Incredible
24 Journey" book. It's from Mexico. This is
25 Mr. Spencer's story to you.

1 Let's talk about his story, his script. I would
2 submit to you that as long as Mr. Spencer stuck to this
3 story, this script, he was able to tell the story
4 fairly lucidly. He had a pretty good memory. The
5 second that he got off the script, the second somebody
6 asked him a question that he didn't see coming, his
7 answer was, I don't recall, sir. What was the script?

8 On September 22, according to Mr. Spencer, he,
9 Mr. Jackson, and Mr. Smith went to Mr. Doria's
10 apartment, entered under the ruse of buying marijuana.
11 Once inside, Mr. Jackson and Mr. Smith grabbed
12 Mr. Doria. Mr. Spencer ties him up. Mr. Doria sits
13 quietly on the couch while the others gather up
14 marijuana. Someone knocks on the door. At the urging
15 of one of the other accomplices, Mr. Doria hops to the
16 door, signals that it's all okay, and hops back to the
17 couch.

18 On the couch at this point, the second time,
19 Mr. Smith hits Mr. Doria on the head at least four
20 times. Mr. Smith stabs Mr. Doria several times.
21 Mr. Jackson and Mr. Spencer stabbed him once each.
22 Mr. Smith then stabs him several more times.

23 At that time, Mr. Abrazado arrives. Mr. Smith
24 grabs his bags and places them on the kitchen table.
25 Mr. Abrazado is forced to his knees and his throat is

1 slit one time by Mr. Jackson. Mr. Abrazado falls to
2 the ground and remains unmoved. Everyone else
3 transports marijuana plants to Mr. Doria's vehicle and
4 leaves. That's the basic script. I would note that if
5 you believe that beyond a reasonable doubt, you are
6 certainly going to find Mr. Smith guilty of multiple
7 crimes.

8 How do we evaluate the script? You have a jury
9 instruction. It is an interesting jury instruction
10 because it tells you how you are to evaluate
11 Mr. Spencer's testimony. What it says is that the
12 testimony of an accomplice, given on behalf of the
13 State of Washington, should be subjected to careful
14 examination in the light of the other evidence in the
15 case and should be acted on with great caution. You
16 should not find the defendant guilty upon such
17 testimony alone after carefully considering the
18 testimony unless you are satisfied beyond a reasonable
19 doubt of its truth.

20 Now, the reason for this instruction is because
21 individuals who testify, accomplices who come in, they
22 have a huge bias, a huge motive to lie. The Judge has
23 instructed you that you are to look very carefully at
24 this testimony before finding that it is credible
25 beyond a reasonable doubt.

1 I want to remind you what Detective Davis told
2 Mr. Spencer. This is at the November 7th interview.
3 This comes ten months after his arrest. I want -- what
4 I want to emphasize to you, Pierre, is that this is
5 your free pass, I mean, as far as really getting out
6 there what your role in this situation was. We know
7 that, you know. We have a certain idea before the
8 interview about what it was, but I want to encourage
9 you to always tell the truth about and be truthful
10 about what your role is.

11 Now, I want to say two things about this sentence.
12 This is an interesting sentence. First of all, of
13 course, is the phrase "free pass." Mr. Spencer at that
14 time and to this day was charged with Aggravated
15 Murder, First Degree Premeditated Murder with
16 Aggravating Circumstances. Soon after this interview,
17 he pled guilty to that charge with deadly weapon
18 enhancements, which add additional time. He knew that.
19 By "free pass," obviously, Detective Davis wasn't
20 saying, you are going to walk out of jail today, but
21 what he was saying is, you are going to walk out of
22 jail some day as long as you talk to us and cooperate,
23 tell us the truth. The truth being in quotations, of
24 course. Mr. Spencer went from life without parole down
25 to a realistic chance of getting out in approximately

1 25 years. That's his free pass. That's why the Judge
2 told you that his evidence should only be acted upon
3 with great caution.

4 There is something else that I find even more
5 fascinating about Detective Davis's statement, and that
6 is the second sentence. We know that, you know. We
7 have a certain idea before the interview about what it
8 was. What is he telling him? He is saying, we already
9 know what we think happened. We have had Mr. Smith and
10 Mr. Jackson and you in jail for the past ten months.
11 We know what we think happened. We want to encourage
12 you to tell us the truth about what we already know
13 happened.

14 Mr. Spencer, of course, at this point has had ten
15 months with his attorney; he has had ten months with
16 the discovery. He told you that he didn't even know
17 Mr. Abrazado's name until he got the discovery. This
18 is his free pass.

19 You know, when I was young -- and I'm sure most of
20 you tell the kids the same thing -- my mom used to tell
21 me that it is a lot easier to always tell the truth
22 because the second that you start lying, you have to
23 tell another lie to cover up for your first lie. And
24 then you have to tell a third lie to cover up the
25 second lie, which covers the first lie. Pretty soon,

1 it's hard to remember what lie you told to whom and
2 when.

3 We have a simple example about that. Who grabbed
4 Mr. Doria? Mr. Spencer says, in his direct testimony
5 to you, that it was Mr. Jackson and Mr. Smith who
6 grabbed Mr. Doria when they first walked into the room.
7 On February 2nd, when he was interviewed, he said, no
8 one grabbed him. On November 7th -- that should say
9 "2008," by the way, I'm sorry. On November 7th, he
10 said all three of them grabbed him. He can't keep his
11 lies straight.

12 Now, is this sequence going to determine your
13 verdict, you know, the fact that he can't remember this
14 detail? Probably not, but it is indicative of the fact
15 that he can't keep his lies straight. The second he
16 gets off script, he gets thrown off.

17 Let's talk about how Mr. Doria died. Again, what
18 I'm going to be doing is, I'm going to be comparing
19 Mr. Spencer's script to what we know really happened.

20 Now, according to Mr. Spencer, at the time that
21 Mr. Spencer tied up Mr. Doria, he was unharmed.
22 Remember, he sits on the couch for several minutes,
23 quietly watching these guys transport marijuana plants
24 back and forth. He is probably thinking to himself, if
25 I just cooperate, they'll steal my marijuana, but I'm

1 going to walk out of this alive. That's probably what
2 he is thinking, so he is being relatively cooperative
3 sitting quietly on the couch.

4 Now, I want to compare that theory with the photos
5 that you have. This is a photograph taken by the
6 medical examiner of how Mr. Doria looked. You can see,
7 in several instances, that there are streams of blood
8 more likely than not caused by the injuries,
9 lacerations, to the top of his head. There are several
10 of them. Here is another one, here. You can see them
11 throughout. Of course, on his -- what would be his
12 left eye, on your right side, he has some blood smeared
13 all over there. He also has blood smeared all over the
14 duct tape.

15 Now, if Mr. Spencer is correct and Mr. Doria was
16 unharmed at the time that he was duct taped, we would
17 expect that -- although there is lots of blood around
18 here and lots of blood down here, we would expect that
19 in this area, there should be no blood. Yet, we know
20 that when the medical examiner removed the duct tape,
21 we see lots of blood smeared. Interestingly enough,
22 the majority of it is in the chin area.

23 Now, question, why would Mr. Spencer lie about
24 this fact? It is because he wants to make himself look
25 better. He wants to minimize his involvement. He

1 wants to make it look like that when he tied
2 Mr. Spencer up, he still didn't think there was going
3 to be any violent acts. I will submit to you that this
4 piece of evidence shows, at least by a preponderance of
5 the evidence, that Mr. Doria had already been injured,
6 seriously injured, probably on top of the head prior to
7 being duct taped.

8 Further evidence of that proposition, according to
9 Mr. Doria, he tied -- I'm sorry, according to
10 Mr. Spencer, he tied Mr. Doria's hands in a
11 perpendicular position, a cross-position. Now, we have
12 a photo. I will leave it up to you to decide if that
13 is a perpendicular position. It looks, to me, like it
14 is more parallel. Arguably, Mr. Doria at some point
15 may have been trying to twist out. I suppose we could
16 excuse it -- excuse the way that his hands look on that
17 basis.

18 There is something else that is really interesting
19 about this photo. There is a piece of tissue that is
20 caught under the duct tape. Now, I would submit to you
21 that the most likely way that that happened was that
22 Mr. Doria was bleeding, and he came accidentally into
23 contact with a piece of tissue. You saw what the room
24 looked like. It was kind of cluttered. He
25 accidentally came into contact with a piece of tissue.

1 Because he was bleeding, the tissue clung to the blood.
2 That happened before the duct tape was placed on the
3 wrist. Again, it's evidence that Mr. Doria was
4 bleeding pretty heavily before the duct taping.

5 You also have evidence that, well, according to
6 Mr. Spencer, there is a knock on the door. We are
7 going to talk about that knock a little bit later,
8 again, about who made the knock. There is a knock on
9 the door, according to Mr. Spencer. At that point in
10 time, according to Mr. Spencer, Mr. Doria was totally
11 unharmmed. They have him stand up, and he hops across
12 the room. He looks in the peephole and he hops back.
13 Here is the problem, Mr. Doria at some point -- and the
14 only logical time is during that hopping. He stepped
15 in a pool of blood. I would submit that he was
16 stepping in his own blood when he stood up to hop
17 across the room, he stepped in a pool of his own blood
18 because he was bleeding so heavily.

19 When did the hopping take place? There is two
20 possibilities here. We have the landlord who dropped
21 off the envelope. He said that he was there at
22 approximately 2:00. We also have Mr. Baska who -- he
23 is all over the place on the times, but the best
24 evidence that we have based on the phone records is
25 that it happened at 1:59, slash, 2:00. We know that

1 the robbery started at 1:52.

2 If we assume that it is Mr. Baska who is knocking
3 on the door, and we assume that the robbery started at
4 1:52, this is happening eight minutes after the start
5 of the robbery with the knock. Within eight minutes,
6 Mr. Doria has been seriously injured enough to create a
7 pool of blood at his feet. He has been duct taped on
8 top of the blood, and then there is a knock on the door
9 causing him to stand up and hobble across the room.
10 That is totally inconsistent with what Mr. Spencer says
11 happened where Mr. Doria should be sitting quietly on
12 the couch for quite some time.

13 Finally, we have the question of who killed
14 Mr. Doria? Of course, Mr. Spencer says it was
15 Mr. Smith. According to Mr. Johnston, it was
16 Mr. Spencer who admitted to him that he cut Mr. Doria's
17 throat.

18 Let's talk about Mr. Abrazado. Again, the script.
19 According to the script, Mr. Doria -- I'm sorry,
20 Mr. Abrazado has his throat split one time across the
21 throat. No other injuries. We know that is not true.
22 We have four injuries. Three of them are pretty
23 serious: One, two, three, and then there is a fourth
24 one right there. That is not quite as deep. Four stab
25 wounds to the center of the back. Somebody did that.

1 According to Mr. Spencer, he was there to see the
2 entire interaction with Mr. Abrazado. How did those
3 injuries happen? I don't know and neither do you. We
4 can conclude based upon this physical evidence that
5 Mr. Spencer is not telling the whole truth about what
6 happened to Mr. Abrazado.

7 Let's talk about the jacket. According to what
8 Mr. Baska -- do I have that right? Mr. Baska. He told
9 Detective Ringer when he saw Mr. Abrazado either
10 driving towards or away from the house -- he gave both
11 stories -- he saw Mr. Abrazado was wearing what he said
12 was a gray sweater. I would submit to you that this is
13 the gray sweater that Mr. Baska observed. He said that
14 Mr. Abrazado was actually wearing it in the car.

15 Now, what is interesting about this, it is kind of
16 a jacket, sweater, whatever you want to call it. It's
17 totally intact. There is no stab wounds to it. There
18 is no blood. It is totally intact.

19 Now, we also know that Mr. Abrazado -- we know
20 this is the jacket because inside of the pocket, they
21 found the receipt for Lowe's. We know that
22 Mr. Abrazado had just been to Lowe's to buy the lights.
23 We find the receipt to the lights. We know that when
24 Mr. Abrazado walks into the room, he has got this
25 jacket. I will submit, more likely than not, he is

1 wearing the jacket.

2 Now, where is the jacket at? The jacket is right
3 here. How does it get there? According to
4 Mr. Spencer, he was grabbed the second he walked in.
5 There is no time to remove the jacket. Certainly, no
6 time to put it where it was found. How does it get
7 there? There is something missing in Mr. Spencer's
8 stories. That something missing gets even more
9 confusing when we consider Exhibit 99. This is
10 Mr. Abrazado's shoe. How does this shoe get severed --
11 not "severed," that is probably a bad word. Separated
12 from Mr. Abrazado?

13 By the way, this is the photo of the shirt that
14 they found with Mr. Abrazado. It has obvious stab
15 wounds; whereas, the jacket does not.

16 We have a shoe missing. Mr. Abrazado, his left
17 leg is underneath the coffee table, and it still has
18 his shoe on it. His right leg is running parallel to
19 the coffee table, and his shoe is off. Now, I have no
20 explanation for that, but I do know that if Mr. Spencer
21 is telling the truth, the second Mr. Abrazado walked
22 in, he was grabbed, forced down, his throat slit, and
23 he was left to lay where he was at. There is no time
24 for his shoe to come off. There is more to this story
25 about what happened to the death of Mr. Abrazado than

1 what Mr. Spencer is telling us.

2 Finally, regarding Mr. Abrazado, I don't know how
3 Mr. Abrazado ended up where he was. Let me see if I
4 can do a demonstration here. According to Mr. Spencer,
5 Mr. Abrazado was on his knees facing the couch when,
6 according to him, Mr. Jackson slits his throat. Now,
7 how he is going to fall? The logical way is to fall
8 forward in which case he should be on his stomach. The
9 other possibility is for him to fall backwards in which
10 case his legs should be all intertwined with each
11 other.

12 If Mr. Spencer is telling the truth, we should see
13 Mr. Abrazado either on his stomach lying flat or his
14 legs all twisted up. Instead, what we see is, he is
15 lying flat on his back. Going back to the photo, his
16 legs are totally stretched out and one of them is
17 underneath the coffee table. That is totally
18 inconsistent with what Mr. Spencer told you.

19 Again, there has to be more to the story of what
20 Mr. Spencer is telling you. I would submit to you that
21 the moral to the story is that Mr. Spencer is, in fact,
22 an integral part and probably the only assailant on
23 Mr. Abrazado at that time.

24 A couple of minor things, we have some bags. You
25 heard Mr. Spencer say that they were packaging up the

1 marijuana plants in black garbage bags that they
2 retrieved from under the sink. There are garbage bags
3 under the sink, but they ain't black.

4 Of more interest is the bags that Mr. Smith
5 allegedly took from Mr. Abrazado. According
6 Mr. Spencer, Mr. Smith immediately grabs the bags and
7 puts them on the kitchen table. Well, he has some
8 large 6-foot lights, which are laying beside the
9 kitchen table. Now, it might be easy for them to get
10 knocked down, and Mr. Spencer did not notice it. We
11 can probably forgive him for not noticing that. What
12 is totally inconsistent is the 7-Eleven bag, and this
13 is the 7-Eleven bag, right here. It is on the coffee
14 table. I have a closeup of it. You can see that there
15 is a bottle of Gatorade in it, and this is the 7-Eleven
16 receipt. Mr. Abrazado, in his errands, went two places
17 that we know of. He went to 7-Eleven to buy some
18 Gatorade, and he went to Lowe's to buy some lights.
19 The two packages are at opposite ends of the living
20 room/kitchen area. The lights are in the area of the
21 kitchen table; although, they are not on the kitchen
22 table. An even bigger mystery is, how does the
23 7-Eleven bag end up right next to Mr. Abrazado?

24 I told you we were going to come back to the
25 knocks on the door. There was actually two knocks, if

1 you believe the witnesses. According to Mr. Baska, he
2 knocked on the door and he made some phone calls that
3 he could hear inside. I had some questions about
4 Mr. Baska's credibility, but we know, from the phone
5 records, that he, in fact, did call at 2:00.

6 We also have Nicholas Vaughey. Nicholas Vaughey,
7 if you'll remember, he is connected with the manager's
8 office of the apartment complex. He claims that he was
9 also there at 2:00. He remembers it being 2:00 because
10 he had to be in Seattle at 3:30, and he had to drop
11 this paperwork off on the way. Mr. Spencer should have
12 heard, not one, but two knocks on the door separated by
13 a short span of time. Now, Mr. Vaughey -- he is
14 saying, approximately, 2:00. He is not saying
15 precisely at 2:00. He just knows that it had to have
16 been around 2:00 because of his errand in Seattle. We
17 also know that when he went up there, he did not
18 observe any potting soil. I would submit that
19 Mr. Vaughey was dropping off the paperwork some time
20 after the start of the robbery and before the robbers
21 left. He knocked on the door. Mr. Spencer should be
22 describing not one, but two knocks on the door,
23 separated by a short span of time.

24 Let's talk about vehicles. Mr. Spencer said that
25 the reason that he was brought into this robbery was

1 because no one else had access to a vehicle. Well,
2 that is just totally wrong. Mr. Smith had ready access
3 to Ms. Sabin-Lee's truck. He could use it whenever he
4 wanted. She let him. She told you that. In fact, she
5 went further, and she said that she believes that he
6 had, not just access to the truck, but the actual
7 truck.

8 Now, earlier, I said we don't know what day this
9 phone call happened where he allegedly made some
10 admissions. The State is theorizing that it happened
11 during the 1,052-second phone call that happened at
12 5:33. Let's assume that the State is correct on that
13 for a second and ignore the fact that she asked him
14 about Hosmer. She told you that on the date that
15 Mr. Smith made some statements, that he had just come
16 into some weed, that she was at work on her lunch
17 break, which would be consistent with the 5:33 phone
18 call.

19 Earlier that day, he had driven her to the mall,
20 dropped her off, kept her truck, kept the truck all
21 day, and then picked her up again at 10:00 at the mall.
22 By the way, that would also be consistent with other
23 phone calls. We know that Mr. Smith called
24 Ms. Sabin-Lee from the home phone -- it is a landline,
25 not a cell phone -- at 8:41, that he called from the

1 home phone again at 1:17, as well as the cell phone at
2 1:16. He also called at 8:52 probably to confirm the
3 pick up. I do that with my wife all of the time. Hey,
4 do you want me to pick you up at such and such a time?
5 We all do that.

6 Did Mr. Smith have a vehicle? I would submit to
7 you that the evidence shows that he absolutely had
8 access to the vehicle. He probably had a vehicle. If
9 he wanted to do a robbery, all he had to do was use
10 Ms. Sabin-Lee's truck. Mr. Spencer is not being
11 truthful when he said that he was the only one with the
12 vehicle.

13 Let's talk about Mr. Spencer's timeline on
14 Saturday. According to Mr. Spencer, he arrives at the
15 Sage Terrace Apartments at some time that he doesn't
16 know. He watches Mr. Smith walk outside. The two of
17 them drive to an apartment at McChord Air Force Base.
18 He can't tell you exactly where, and the police made no
19 effort to locate it. Mr. Smith leaves the truck, goes
20 inside ostensibly to purchase the rifle. Mr. Smith
21 returns to the vehicle. He does have a rifle,
22 according to Mr. Spencer. He situates the rifle in the
23 backseat of the truck. They then drive back to the
24 Sage Terrace Apartments where both of them sit in the
25 truck. Neither of them goes inside. Mr. Jackson walks

1 outside, gets into the truck. The three of them drive
2 over to Mr. Doria's apartment, and they arrive at
3 1:52 p.m. for the robbery to commence.

4 Now, I'm going to go back to the phone calls for
5 just a second. We have, of course, the Pancho Villa
6 phone call at 1:16 p.m., which the State is claiming
7 Mr. Smith is responsible for, and I don't dispute that.
8 What is interesting is, we have a call from the home
9 phone at 1:17. Mr. Smith had to have been home at
10 1:16, 1:17, calling Ms. Sabin-Lee, consistent with his
11 statement to the police that he used the phone just
12 before they left.

13 What is even more interesting is that if you do
14 the simple math of 1:17, when we know Mr. Smith had to
15 have been home coupled with the fact that we know that
16 the robbery had to have happened at 1:52, it gives 35
17 minutes.

18 Now, unfortunately, we don't know exactly where
19 this apartment is that Mr. Spencer claims that he went
20 to. We don't know exactly how long Mr. Smith was
21 allegedly inside. We don't know how long they had to
22 wait for Mr. Jackson to come outside. There is a lot
23 of we don't knows. My question is, is it reasonable
24 with Mr. Smith running, jumping into the car, racing to
25 McChord, get in the apartment, grab the gun, get

1 outside. Presumably, he purchased the gun, I would
2 assume. You have to count some money, don't you? Get
3 outside, jump in the vehicle, get situated in the back,
4 rush back over to the Sage Terrace Apartments, get
5 Mr. Jackson, and get back over to Mr. Doria's apartment
6 by 1:52, 35 minutes. I don't think it is possible.

7 Let's talk about fingerprints real quick. The
8 State will say that it's not surprising there is no
9 fingerprints because they wore gloves. The gloves were
10 very similar to the ones that we have, here, in the
11 courtroom except they are blue, but that is not
12 entirely true.

13 According to Mr. Spencer, when they went into the
14 apartment, they were not wearing gloves. When they
15 came out of the apartment, they were not wearing
16 gloves. According to Mr. Spencer, Mr. Smith went into
17 the apartment again later on, and he was not wearing
18 gloves. There should be fingerprints attributable to
19 Mr. Smith in that apartment if he was inside the
20 apartment.

21 My question is this, you have heard from
22 Mr. Spencer. You have heard from Mr. Smith's story.
23 Who was the third man? Now, there was a couple
24 possibilities here. Mr. Spencer admits that he was
25 inside the apartment. We have Mr. Jackson's

1 statements. Who was the third man?

2 Now, there is an interesting fourth man in all of
3 this. No one really talks about him because
4 Mr. Spencer conveniently doesn't remember his name.
5 Remember, I told you about the free pass.
6 Detective Davis telling him, we already know what we
7 think we know. You have to tell us the truth. He
8 doesn't remember who the fourth person is. Is it
9 possible that mister -- that the fourth person is that
10 third man? That is certainly a possibility. I think
11 that there is a better possibility. Is there even a
12 third man? We have two guns. Well, there is two
13 people. Two guns would be good. We have two vehicles.
14 We have Mr. Spencer's vehicle that he admits that he
15 used. They took Mr. Doria's vehicle. That is two
16 drivers. That is good. We have two phones.

17 You know, one thing that is really interesting
18 about these phone records. You will have them. There
19 is a lot of phone calls between the Pancho Villa phone
20 and the phone that we know is attributable to
21 Mr. Spencer in the relevant period of time. At no time
22 did either Mr. Spencer or the Pancho Villa phone ever
23 call Mr. Jackson's personal phone. There is no --
24 during the relevant period of time, that doesn't
25 happen.

1 Now, there were several times in all of this when
2 the guys were separated, according to Mr. Spencer, of
3 course. You know, for instance, when they go to the
4 Emerald Queen Casino, according to Mr. Spencer, they
5 left Mr. Smith behind. As they are driving there,
6 Mr. Spencer and Mr. Jackson are in separate vehicles.
7 Why? Wouldn't we expect to see some phone calls
8 between either Mr. Jackson and Mr. Spencer or between
9 Mr. Jackson and his home? Mr. Jackson makes no phone
10 calls during this period of time. I will submit to you
11 that the reason that he makes no phone calls is because
12 he has the Pancho Villa phone.

13 We have Mr. Johnston, approximately, two weeks,
14 a-week-and-a-half to two weeks before Mr. Spencer is
15 arrested on January 14th. Mr. Spencer tells
16 Mr. Johnston that he robbed a drug dealer with, quote,
17 another friend. Well, if he did it with three guys,
18 you wouldn't expect him to use the phrase another
19 friend.

20 Then, there is one other thing. Here, I'm going
21 to ask you to think like Mr. Spencer. It may be hard,
22 but I'm going to ask you to do that. I want you to
23 imagine that you are Mr. Spencer on January 14th. You
24 have just been arrested at gunpoint. You'll remember
25 that Mr. Johnston told you that it was quite a dramatic

1 arrest at gunpoint. You have been placed into an
2 interview room alone. You know you have been arrested
3 probably for something serious, but you don't know
4 what. You are sitting there. You are waiting for the
5 detectives to come in. You are racking your brain,
6 thinking, all right, why am I here?

7 The detectives come in, and they don't tell you
8 why you are there. Instead, they ask you a couple of
9 questions. The first relevant question that they ask
10 you is, do you know Tyreek Smith? Now, if you are
11 Mr. Spencer and you are sitting there in the interview
12 room, you are going to be thinking to yourself,
13 Tyreek Smith. Tyreek Smith. What have I done with
14 Tyreek Smith? I can't think of any crimes that I have
15 done with Tyreek Smith. It seems like a harmless
16 question. Yeah, I know Tyreek Smith.

17 Then, the next question, do you know "D"? Uh-oh.
18 Lightbulb, "D." This is about the weed dealer. This
19 isn't good. This is a trick question. If I say I know
20 "D," they might say that I'm involved in the homicide
21 of the weed dealer. No, I don't know "D." Are you
22 sure you don't know "D"? No, I don't anybody named
23 "D." His real name is Darrell Jackson. Now, I don't
24 know anybody named Darrell Jackson. Oh, come on, we
25 know that you know Mr. Jackson. He is a black guy who

1 usually wears glasses. Uh-oh. They're narrowing
2 things down. I don't know if I can continue with my
3 denial. Yeah, I do know him.

4 Now, why would he immediately admit to knowing
5 Tyreek Smith and deny knowing Darrell Jackson? The
6 answer is that he has nothing to hide with
7 Tyreek Smith. He has a lot to hide with
8 Darrell Jackson. I would submit to you that the State
9 has not proved beyond a reasonable doubt that there was
10 a third man. If the State has not proved that there
11 was a third man, then what?

12 When you get back into your jury deliberation
13 room, it has been suggested to you by Mr. Blinn and
14 myself that you should start at the back, start with
15 the Burglary 1 and Robbery 1, Counts 5 and 6. You need
16 to decide whether Mr. Smith's actions on
17 September 21st, which he admitted to the police, where
18 he talked about robbing a drug dealer, he talked about
19 going to the 7-Eleven purchasing a Virgin Mobile phone
20 card, all on September 21st when no robbery took place,
21 you need to decide whether his actions make him an
22 accomplice to either the robbery or the burglary that
23 happened the next day. If you have gotten this far,
24 you have decided that he wasn't present, or at least
25 the State hasn't proven that he was present, on

1 September 22nd, I would submit to you, based upon the
2 totality of the instructions that if Mr. Smith was not
3 present in the apartment on September 22nd, you cannot
4 find him to be an accomplice for what happened on that
5 day. Even if he did have some element of
6 responsibility for talking about the planning, again,
7 you have to find him guilty of the crime.

8 Did he aid in the crimes of robbery and burglary
9 on September 22nd? At that point, if you have found
10 that Mr. Smith was not in the apartment and you find
11 that his -- that his loose discussions on
12 September 21st do not make him an accomplice, you have
13 no choice, under the instructions, but to find
14 Mr. Smith not guilty of all six counts.

15 I want to briefly cover what happens if you do
16 find him inside the apartment. I'm asking you not to
17 find that. If you do, you need to review the remaining
18 instructions. In particular, you need to review Counts
19 1 and 2 regarding premeditation. What was the
20 deliberation, the thought process, of Mr. Smith inside
21 the apartment?

22 You also have an affirmative defense to Felony
23 Murder. I will briefly go over that. You know,
24 Mr. Smith, according to his statement to the police on
25 September 21st, he was willing to discuss stealing

1 marijuana, going to a drug dealer's apartment, and
2 stealing marijuana, but he was unwilling to participate
3 as long as guns and violence were involved.

4 Counts 3 and 4 have a defense of -- and this is to
5 the Felony Murder charges. If Mr. Smith did not
6 personally commit the homicide and if you found that he
7 was not in the apartment, then, clearly, you have to
8 find that he did not personally commit a homicidal act,
9 that he was not armed with a deadly weapon. If he
10 wasn't there, he wasn't armed. They had no reasonable
11 grounds to believe that any other participant was
12 armed. The second the discussion turned to guns and
13 violence, he said, I'm out of here. Finally, you have
14 no reasonable grounds to believe that any other
15 participant intended to engage in conduct likely to
16 result in death or physical injury. Again, as soon as
17 the discussion turned to guns and violence, he left.

18 Briefly, if you find Mr. Smith guilty of anything,
19 there are some weapons enhancements. I would submit
20 that the overwhelming evidence in this case is that a
21 knife was present. Someone had a knife. Whether it
22 was Mr. Spencer or Mr. Jackson or Mr. Smith, I don't
23 know that we will ever fully know that. Someone
24 brought a knife. You have two deadly weapon
25 enhancements. One is for the knife itself and the

1 other one is for a firearm. We have no firearms. All
2 we have is Mr. Spencer's word on that. Even if you
3 find Mr. Smith guilty of something, I would ask that
4 you find that he was not in possession of a firearm.

5 You have listened patiently. You have a lot to
6 mull over. Again, I want to reiterate the fundamental,
7 factual question in this case is, who was inside the
8 apartment? Once you've resolved that factual question,
9 the legal questions are going to fall into place pretty
10 easily, I think. I hope. Mr. Spencer is not credible.
11 There is no third man. Now, I'm asking you to find
12 Mr. Smith not guilty of all six charges.

13 Thank you very much.

14 THE COURT: Okay, ladies and gentlemen, we are
15 going to take a break for about ten minutes. Again,
16 during this time, please do not discuss the case among
17 yourselves or with anyone else. We will see you back
18 here in ten minutes.

19 Thank you.

20 (Off the Record - Recess.)

21 THE COURT: Welcome back, everybody.

22 Let's have the jury.

23 (Whereupon, the following
24 proceedings were held in the
presence of the jury).

25 THE COURT: Welcome back, everyone. Please be

1 seated.

2 Ladies and gentlemen, please give your attention
3 to the closing argument of Mr. Ronald Ness on behalf of
4 Darrell Jackson.

5 Mr. Ness.

6 MR. NESS: Thank you. May it please the Court,
7 Counsel, ladies and gentlemen. I think that when we
8 started three weeks ago, I told you that I'd probably
9 was going to be the shortest one of all because I'm at
10 the tail end of this. That's what is going to happen.

11 The first thing that I want to do is, I guess,
12 apologize because I don't have any fancy electronic
13 stuff for you to look at when I'm talking to you. A
14 couple reasons for that is, one, I guess I'm an old
15 dinosaur. I never did teach myself how to do that.

16 The other thing is, when you go back there, you
17 are not going to take any of that with you. The only
18 thing that you are going to have is your instructions,
19 which I think that each one of you have a copy still, I
20 hope. I'm going to talk to you about those -- the
21 exhibits and the testimony. You are not going to have
22 any of these electronic things.

23 There are some things that I agree with Mr. Blinn
24 and Mr. Weaver on. I agree, especially, as it relates
25 to Mr. Jackson, that what is critical when you

1 determine his guilt or innocence as to Count 1 and 2,
2 no matter what happened in that apartment on
3 September 22nd.

4 I'm not going to talk to you about all of the
5 people that you heard testimony about finding these two
6 young men and finding their bodies and those
7 circumstances. I'm not going to get up here and tell
8 you that Darrell wasn't there because he told the
9 police, and you heard it, he was. What happened in
10 that apartment is crucial as to who did what.

11 Now, you have two different stories. We have
12 Pierre Spencer, who is better known as Mexico to most
13 people, and Mr. Jackson's statement that he gave to
14 Detective Miller, Detective Vold, and his taped
15 statement that you heard. I believe it was yesterday.

16 I'm going to go over those with you, and I'm going
17 to ask you to consider those in light of the
18 instructions that have been given to you. And I will
19 read the first one to you, which is No. 13, a person
20 commits the crime of Murder in the First Degree, as
21 charged in Counts 1 and 2 for each defendant, when with
22 a premeditated intent to cause the death of another
23 person, he or she causes the death of such person or of
24 a third person.

25 The question is, did Darrell Jackson, under this

1 instruction, with a premeditated intent to cause the
2 death of either Ruben or Warren, cause the death of
3 either Ruben or Warren?

4 Now, Mr. Weaver talked quite a bit to you about
5 whether or not Pierre Spencer was being honest with you
6 when he testified from that witness stand. I'm not
7 going to go over all of those, again, because I think
8 that you are all intelligent people, and you don't need
9 to be told twice of the same thing.

10 There are some additional things that I think that
11 you need to consider. One being, you know -- and I
12 think that I've talked to you about this at the
13 beginning when we were talking about who should be on
14 this jury. Do you believe -- I think that I asked a
15 few of you -- that somebody could get up on the witness
16 stand, raise their right hand, take the oath, look at
17 14 people, you people, and then lie to you? Yes.

18 Now, you know as well as I do that when people are
19 in a situation where they have the opportunity to be
20 completely honest or to start fudging a little bit and
21 they want to get away with it, they get caught on the
22 small details. That's where you can tell whether
23 someone is telling you a lie about the bigger picture
24 if they are caught in the small details.

25 That's why we point out that Mr. Spencer lied to

1 you when he got up there and said, "I have never been
2 called Mexico." You are going, so, what? It means
3 that he was willing to sit there and look at you and
4 lie to you about a small detail, whether or not he was
5 ever called Mexico. You know that for two reasons.
6 One there's the people that testified that that is the
7 only way that they knew him. The other one is that
8 Detective Davis, during the interview, asked him
9 specifically, do you go by the name Mexico? He was
10 told yes. Who on the witness stand was being honest
11 with you? Detective Davis or Pierre Spencer.

12 Now, what I would like to talk to you more about
13 is Darrell's statements to Detective Miller and
14 Detective Vold. Mr. Blinn talked to you about the
15 false statements of Darrell Jackson, and that's true.
16 When Darrell first talked to the detectives, he denied
17 being involved. I'd ask you, ladies and gentlemen, is
18 that not something a lot of people do when they are
19 caught in a situation that they know that they can't
20 get out of, and they are afraid that they are really
21 going to get into big trouble? That is not unusual.

22 Then, after he is confronted, he says, "Yes, I was
23 there Friday night." He starts coming out a little bit
24 at a time. Mr. Blinn said that to you. Well, then, he
25 started coming out a little bit at a time of what

1 actually happened. I submit to you that what he told
2 the police that he mentioned on the taped statement is
3 what happened.

4 Now, there are some things on this taped statement
5 that he talks about that talk about what happened that
6 night. First of all, he talked about that the original
7 plan was that on Friday night, he was to go get the bag
8 of weed from Ruben. When asked if you guys have any
9 plan to do a rip-off or a lick, Mr. Jackson said, in
10 the way that they were acting -- what was said, "Yeah,
11 I believe they had intentions to do that."

12 Obviously, Mr. Jackson believed, on Friday night,
13 when he went over to buy a bag of weed, he knew that
14 there was a plan to do a lick. He knew that he was
15 involved as a person who went in, or he was supposed to
16 go in, so that the other people could gain access. No
17 question about that. I can't get up here and tell you,
18 ladies and gentlemen, that anything else happened
19 because that's what Darrell Jackson, himself, said.

20 Later, in the statement, after he had made some
21 other comments about what had happened, he indicates
22 that the plan was to, again, go over to Ruben's
23 apartment, that they drove over there in a red SUV.
24 When he got in the vehicle, he saw this .357 and SKS.

25 Now, talking about the SKS, can you believe that

1 Pierre Spencer got that SKS into his car Saturday just
2 by happenstance? That's what he said on the stand. I
3 don't know how it got in there. It was just there. If
4 you believe him, there is no reason, number one, that
5 it could have been put there because, according to him,
6 that SKS was held by other people who got into the
7 other car. It doesn't make any sense. It doesn't add
8 up. That's what you are supposed to do as jurors is
9 determine, can we believe this guy who has so many
10 things that don't add up, that we know lied to us, can
11 we believe him beyond a reasonable doubt?

12 Mr. Jackson, in his statement, says that once he
13 got inside of the outside door that night, the others
14 rushed Ruben up the stairs. One of them was hitting
15 Ruben repeatedly in the back of the head. Now, think
16 about the evidence that Mr. Weaver talked to you about
17 and Dr. Kiesel talked to you about, which makes sense,
18 that this was going on before Ruben was taped up.
19 That's what happened. He was hit in the head before he
20 was taped up. That's what the physical evidence showed
21 you.

22 Mr. Jackson tells you that he waited a little
23 while at the bottom of the stairs and then went up to
24 the apartment. When he got up to the apartment, he saw
25 Ruben on the couch with his hands tied, and he appeared

1 to be duct taped, electrical tape, but it was gray,
2 mouth and hands. It says that he was being hit in the
3 head by somebody's hand. He was bent forward, and then
4 he was stabbed in his back. He thinks it was five or
5 six times. He tells you that he was freaking out. He
6 went downstairs. He came back up later, and Warren
7 arrived, shortly after he went back up. He got hit,
8 and then another stabbed him with the knife.

9 The point of it all, ladies and gentlemen, is that
10 under the instructions, 15, 16, to convict
11 Darrell Jackson in the crime of Murder in the First
12 Degree, you have to find that he or an accomplice acted
13 with intent to cause the death of Ruben Doria and that
14 the intent to cause the death was premeditated.

15 Well, we don't know. That's the whole point. You
16 do not know because you have Pierre Spencer who is not
17 telling you the truth. You have Mr. Jackson who is
18 telling you that I wasn't there when this occurred. I
19 was not in the apartment. You heard that. I didn't
20 know that anybody was going to be killed.

21 Now, you have another instruction that tells
22 you -- and I believe Mr. Blinn put it up on the
23 screen -- that talks about what "premeditation" is. It
24 is thought over beforehand. It tells you that you have
25 to form an intent to take a human life. If you break

1 it down into, basically, it's that somebody has to
2 think about it beforehand that they're going to take a
3 human life. The killing may follow immediately after
4 the formation of the subtle purpose.

5 This is a very difficult instruction to
6 understand. Some people think "premeditation" means I
7 have to sit down. I have to really think about it.
8 Once I have a chance to really think about my options,
9 then I'll go ahead and do it. Some people think, well,
10 if I decide to do something, if I do it right now.
11 That is for you to decide, what do you think based on
12 what the language is in this instruction, what it
13 means.

14 Going back to Mr. Spencer -- and I'm jumping
15 around a little bit. There is another bit of testimony
16 regarding Mr. Johnston. Mr. Johnston, although he had
17 a number of prior convictions, he had no reason to come
18 in here and tell you anything. He didn't have any
19 promises made, no deal made, nothing. He came in here
20 and told you about his conversation with Mr. Spencer
21 while he was living at his house. How do you know that
22 he talked to him about it, Mr. Spencer talked to
23 Mr. Johnston about this incident? He gave him some
24 details, the weed dealer. He told him about going to
25 Mexico. He gave him details that Mr. Johnston wouldn't

1 have known, but for the conversation that he had with
2 Mr. Spencer.

3 Mr. Spencer, in that conversation, told him that a
4 couple of interesting things. One, is that he was
5 going to get \$2,000 out of this incident, and he,
6 actually, ended up getting \$2,000. Two, is that he cut
7 the throat of the person who had been duct taped.
8 Whether you believe that Mr. Spencer was bragging to
9 Mr. Johnston or whether he was -- whatever he might
10 have been doing. That is not -- the point is that
11 Mr. Spencer denied even talking -- denied even
12 talking -- to Mr. Johnston about it. How did
13 Mr. Johnston have these details? Mr. Spencer told him.
14 Mr. Spencer lied to you people when he was testifying.

15 A couple of other things that, and I don't know if
16 its important to you or not, but I think that it goes
17 directly to Mr. Spencer's testimony. Remember,
18 Mr. Spencer said that he thought that the knife had
19 been cleaned off. First of all, he said once. And
20 then next, he said, "Well, no. I think it was two
21 times." Mr. Blinn, during his argument, indicated that
22 there was the sink -- the swab in the sink was
23 consistent with Warren. I have to disagree with that
24 because I don't believe that there was ever any
25 testimony that the swab from the sink had been tested.

1 You heard testimony in the form of a stipulation
2 regarding the testimony of Jeremy Sanderson indicating
3 that he received -- and he is the DNA guy, Jeremy
4 Sanderson. He received a swab, stained dark red, and
5 reported to be a sample of blood from a bathroom floor.
6 The swab reported to be a sample from sink handles.
7 Other swabs were from the vehicle. There's the swabs
8 which are the reference samples from Mr. Jackson and
9 Mr. Spencer and Mr. Smith, a large envelope with the
10 red stains on it. At no time did he indicate that he
11 had received a swab from the sink.

12 Remember, the testimony -- and I forget who the
13 tech was that collected the swab. They swabbed the
14 floor where there appeared to be a drop of blood in the
15 bathroom. By the way, that swab came back, according
16 to the DNA, to be consistent with Mr. Abrazado.

17 They also swabbed the handles on the sink, and
18 they swabbed what appeared to be diluted blood in the
19 sink itself. She said that she went down inside the
20 drain and swabbed inside there.

21 I don't know if Mr. Blinn meant to say that the
22 swab from the floor was consistent with Warren, but the
23 swab from the sink wasn't because it was never tested.
24 That would have been interesting to see if there was
25 one person's DNA or a mixture. We don't know.

1 What that leads me to is you, as jurors, have to
2 be convinced of a person's guilt beyond a reasonable
3 doubt. Now that you are at this point and for a while
4 you go back to the jury room, you will remember at the
5 beginning that we talked probably almost to every one
6 of you about reasonable doubt, if you agreed with it --
7 and I'm sure some of you are going, why are they asking
8 us? It is a pretty common term. We've all heard it
9 throughout our lives. Now, when the 12 of you go back
10 in there, you're going to actually put that into use.
11 You have an instruction that defines reasonable doubt
12 for you.

13 The one thing that has not been, I guess, pointed
14 out to you is that reasonable doubt is one for which a
15 reason exists and can arise from the evidence or lack
16 of evidence. I would point out lack of evidence
17 because of what I have been talking to you about what
18 went on inside the apartment. That goes directly to
19 Counts 1 and 2. It's our position that the State has
20 not met their burden as it relates to Mr. Jackson for
21 Counts 1 and 2. We'd ask you to you find him not
22 guilty of those. Thank you.

23 THE COURT: You are now to hear the rebuttal
24 closing statement of Mr. Costello.

25 MR. COSTELLO: Thank you, Your Honor.

1 May it please the Court, ladies and gentlemen,
2 good afternoon. It has been kind of a long day
3 already. I don't intend to keep you real long.

4 I would like to start by discussing this topic of
5 reasonable doubt. Mr. Weaver commented to you that,
6 quote, you know, you all have your doubts, and he
7 argued to you the opposite of a doubt is certainty,
8 according, evidently, to the actress, Ms. Streep,
9 although that is not in your jury instructions, that is
10 not the standard, that the State has to prove a case to
11 certainty, to any mathematical certainty, or
12 100 percent certainty.

13 Mr. Weaver argued to you that if you can
14 articulate a reason to doubt, essentially, that means
15 an acquittal must follow. Unfortunately, Mr. Weaver
16 and Mr. Ness glossed over and said nothing at all about
17 the subject of a doubt about what? Mr. Weaver argued
18 long and hard about certain factual aspects of the
19 case, certain issues that had arisen, and it is
20 contended that we don't know the answer to that. We
21 have a doubt about some particular fact suggesting to
22 you then by his argument that if you have a doubt about
23 any single fact or some important issue in the case,
24 well, that means an acquittal must follow. That's not
25 what this legal standard means.

1 I urge you to pay close attention to the
2 instructions. You have 12 of them that start with the
3 words "to convict." What you are going to say for each
4 crime, six crimes charged as to each defendant,
5 therefore, 12, you will see that the Court has told you
6 that to convict the defendants of the respective crimes
7 that are laid out there, each of the following elements
8 must be proved beyond a reasonable doubt; therefore, it
9 is the elements that are at issue. Criminal law is
10 elemental. It's not a matter of whether you have
11 questions and unanswered questions and concerns about
12 some particular underlying fact. The issue is, has the
13 State proven to you beyond a reasonable doubt that each
14 of these elements is true?

15 You can have questions. You are going to have
16 unanswered questions. It is not legally required --
17 and, in fact, it would be impossible for the State of
18 Washington to prove a case to perfection, to
19 mathematical certainty, to answer every question that
20 you have. It is not the burden. That would be an
21 impossible burden to carry. Having doubts is
22 acceptable. It is understandable. Again, as to what?
23 Let me give you an example.

24 When Ms. Sabin-Lee testified to you about her
25 uncertainty as to the exact words that Defendant Smith

1 used in describing how he came into the possession of
2 the marijuana, how he hit a lick, how this medical
3 marijuana came into his possession, well, you certainly
4 have reasonable doubt, if you will, as to exact words
5 that she heard. There is no doubt that she was being
6 told by her boyfriend, former boyfriend, that he was
7 personally involved in this criminal episode.

8 I would like you to try to picture in your mind
9 two sets of railroad tracks, four iron rails, if you
10 will, parallel to each other. Imagine that the iron
11 rails are the elements of proof as you will find in the
12 "to convict" instructions. Now, underneath the iron
13 rails are the numerous ties, the pieces of wood that
14 support the iron rails.

15 Well, the rails are, in this analogy, they are the
16 elements of proof. The ties are all of the myriad of
17 facts and supporting issues of evidence that you are
18 going to have. All right.

19 Now, if you have concerns and issues about some of
20 that supporting evidence, it is the equivalent of, if
21 you will, removing one of the supporting railroad ties
22 or maybe even several, but the iron rails remain. They
23 are still adequate, more than adequately supported,
24 even if you have concerns about some of the underlying
25 evidence.

1 To take the analogy a step-father, defense counsel
2 would undoubtedly like you to believe that Pierre
3 Spencer is like a -- his testimony is like a railroad
4 bridge, you know, crossing a gap. If you don't believe
5 Spencer, if his testimony is incredible in some
6 respect, well, then the whole bridge falls and the
7 State's case falls. You see, the Court has instructed
8 you that it is your duty to consider the evidence as a
9 whole. The testimony as a whole. You don't put undue
10 weight on one particular witness or one particular
11 piece of evidence. Spencer's testimony, as Mr. Blinn
12 explained to you, is certainly not the linchpin of the
13 State's case. It is some of those railroad ties as
14 with all of the other evidence in the case.

15 The suggestion has been made to you that
16 Pierre Spencer has to be believed entirely in every
17 respect. That's not the law. The Court's instruction
18 to caution you about Pierre Spencer's testimony is a
19 very common sense instruction. When somebody like
20 Spencer makes a deal with the State of Washington and
21 he testifies, you are going to look at it cautiously.
22 That is very appropriate. The Court said to you, in
23 his instruction, that if the State is relying solely
24 upon the accomplice's testimony, then you need to
25 believe that accomplice beyond a reasonable doubt. The

1 Court is not relying solely on Pierre Spencer's
2 testimony as I will be arguing shortly. There is ample
3 evidence that demonstrates that his story is accurate.

4 Now, let me get into that. Let me identify some
5 of the areas where Mr. Spencer's testimony fits very
6 well with the other evidence in this case.

7 Defendant Jackson told the police that he was
8 certainly aware of the planning that occurred on Friday
9 night, just like Mr. Spencer talked about. He denied
10 that he was part of that planning, but he knew what the
11 plan was. He explained that he was supposed to go in
12 there, buy some marijuana, determine how many people
13 were in there. He described Jackson did the aborted
14 effort on Friday night just like Spencer talked about.

15 Mr. Jackson told the police that two guns were
16 brought, a rifle and a handgun. Jackson explained how
17 Victim Doria was contacted, via telephone, just like
18 Spencer talked about.

19 Mr. Jackson's description of the police of the
20 overall sequence, Friday night going into Saturday and
21 through the day Saturday, is very consistent with
22 Mr. Spencer's sequence, not in all respects, but it is
23 very consistent overall.

24 Defendant Smith's admissions to the police
25 regarding his participation in the planning at the

1 7-Eleven store, the purchase of minutes on the Virgin
2 Mobile telephone, the Larbi phone. That is -- again,
3 it fits well with what Mr. Spencer described. It
4 happened, loading up the phone.

5 Defendant Smith's admissions to the police after
6 being coaxed to tell the truth about his personal
7 possession, personal use of the Larbi phone, that too,
8 fully consistent.

9 His statements and admissions to Ms. Sabin-Lee and
10 to Mr. Simmons' regarding all of these pot plants that
11 he came into possession of, that fits Spencer's
12 description of what was taken during this criminal
13 episode.

14 The cell phone records also support and
15 demonstrate how Spencer's testimony fits with the rest
16 of the evidence in this case. The Larbi's phone was
17 used to facilitate the crime just like Spencer said.
18 It was possessed by Smith before and immediately after.
19 I'm not going into all of the details of the phone
20 records. You will have them with you, and you've heard
21 Mr. Blinn describe them as well. It all fits.

22 Patrick Baska's description to you, as he
23 testified, talking about his description of going to
24 the door, knocking on the door, belatedly, but given as
25 he testified to me and then to you, that description of

1 those events were not given to the police about the
2 door knock or the phone calls. It's fully supported by
3 the cell phone records and, again, fits with what
4 Mr. Spencer had to say.

5 Now the defense has attempted to make much out of
6 the notion that Spencer was given the police reports.
7 He testified that he got the reports sporadically for
8 some minutes at a time, and he had to give them back.
9 They're saying that he is reading these reports and
10 concocting his story.

11 Well, Mr. Baska's description of knocking on the
12 door, calling the cell phone, hearing it ring, that is
13 not contained in the police reports. Mr. Baska didn't
14 tell that to the police. How could Spencer have known
15 this if it didn't happen? It happened just that way.
16 Mr. Baska's testimony is actually very supportive and
17 fits well with what Spencer had to say, and that is, of
18 course, why counsel, Mr. Weaver, wants you to now think
19 Baska is lying. Of course, he wants you to think that
20 Ms. Sabin-Lee is lying. And then, of course,
21 Mr. Spencer is lying and that everybody is lying,
22 critical witnesses, except his own client.

23 Some other evidence that fits with Mr. Spencer's
24 description of events, what was taken, the safe, the
25 X Box, the marijuana. This all fits with what the

1 victim's friends had to say, what the investigation of
2 the scene had to show.

3 The stabbing injuries to Victim Doria's back and
4 to his neck, the lacerations on the scalp, the slashing
5 of Mr. Abrazado's throat, that all fits. Mr. Spencer
6 did not see Mr. Abrazado stabbed in the back. If you
7 were studying the police reports, as counsel would have
8 you believe, in preparing to give his testimony, if he
9 were truly out to get his friend, Mr. Smith, and his
10 acquaintance, Mr. Jackson, with blatantly perjured
11 false testimony in saying that Smith was at the scene,
12 when he really wasn't, if he were out to do all of
13 those things, why wouldn't he, having studied the
14 report, had told you that he was aware of the stabs to
15 Mr. Abrazado's back?

16 The State submits to you that inconsistencies with
17 Mr. Spencer's testimony supports -- it increases his
18 credibility and doesn't undermine it in a significant
19 way. If his story was 100 percent dovetailing with all
20 of the other evidence in the case, would you not be
21 very suspicious of that? Wouldn't that be stronger
22 evidence that he had concocted a story consistent with
23 the police report than what you heard? It's human
24 nature that with the passage of time to have some
25 details to be inconsistent.

1 Finally, the Isuzu Trooper being at the Emerald
2 Queen Casino is an important fact consistent with
3 everything in the case. That is an interesting issue,
4 if Mr. Smith was not even at the scene as he contends,
5 and if Mr. Jackson took the bus home midstream in this
6 criminal episode as he contends, how do we get the
7 Trooper to the Emerald Queen Casino? There is two
8 automobiles at the scene of the crime, are there not?
9 Mr. Spencer's automobile and the Isuzu Trooper that was
10 brought back there by Mr. Abrazado. How do we get the
11 Trooper to the Emerald Queen Casino if these other
12 claims are true, that Smith wasn't even there, and
13 Mr. Spencer couldn't drive two automobiles, now could
14 he?

15 Ladies and gentlemen, the defense has tried hard,
16 but they have had very little success with attacking
17 the credibility of Mr. Spencer. What we have had here
18 in this trial is an effort by the defense counsel to
19 put Mr. Spencer on trial. They have, essentially,
20 attempted to play the role of the prosecutors and put
21 the focus on Mr. Spencer. Let's put him on trial and
22 take the focus off of our own clients, not a surprising
23 effort, but the prosecution should be left to the
24 prosecutors.

25 Now, is it truly the defense that had been brought

1 out here today during this trial -- is it truly the
2 defense that Mr. Spencer has gone by the nickname of
3 Mexico? That's the defense? That Mr. Abrazado's
4 sandal was off of his foot as he laid there dead, that
5 his legs are stretched out in front of him, that's the
6 defense to these charges, these sort of claims?

7 Have you heard a shred of evidence that
8 Mr. Spencer had any motive to put Mr. Smith at the
9 scene, his friend, to put him at the scene falsely.
10 You heard a great deal of speculation and rhetorical
11 argument from Mr. Smith that he would be motivated to
12 do this. Have you heard any real evidence to show that
13 that is what he did, that he came in here and said,
14 Smith was there, and Smith truly wasn't there. Now,
15 the arguments of counsel, the speculation, that is not
16 evidence.

17 There has been much made of the leniency that was
18 shown to Mr. Spencer or what he anticipates receiving
19 by way of leniency. You will have his plea agreement,
20 and it lays out exactly what he is facing. We don't
21 know, of course, what his ultimate sentence would be.
22 If you take the low end of the range and high end of
23 the range, it's about 30 years. We don't know what the
24 Judge will do, of course, but that is a long time.
25 It's not exactly a sweet deal.

1 I would like to focus a bit more on
2 Defendant Smith. Let's suppose, for the sake of
3 argument, that you choose to believe the yarn that he
4 spun with the police, that he was involved in the
5 planning process, but as soon as he heard about a gun
6 getting involved and perhaps being used to strike one
7 of these pretending robbers here, then he bailed out.
8 As Mr. Weaver put it, he had a problem with guns and
9 violence -- Mr. Smith did -- so he had bailed out at
10 that point saying that he didn't want to be involved.
11 Let's suppose for a moment that is true.

12 Well, a couple of things are reasonable to infer
13 here, all right. It is unrefuted that Mr. Spencer sold
14 Mr. Smith a .357 revolver. It is unrefuted, of course,
15 that Mr. Smith was a member of the United States Army.
16 It's pretty reasonable to infer that as a member of the
17 army, he has had training in using firearms to kill
18 people.

19 MR. WEAVER: I'm going to object to this. I don't
20 think that is proper.

21 THE COURT: Overruled.

22 MR. WEAVER: The training that he received in the
23 army is totally different than what we are describing
24 in this incident.

25 THE COURT: I have no idea. It is an inference he

1 is asking the jury to make. Overruled.

2 MR. COSTELLO: Thank you, Your Honor.

3 These are reasonable inferences for you to realize
4 that Mr. Smith would not have a problem in dealing with
5 firearms as counsel would like to suggest to you. The
6 presence of a gun in a criminal episode that he was
7 quite willing to participate in the planning for, the
8 presence of a gun is not going to scare him away.

9 Let's suppose that you believe that he didn't go
10 along. He didn't set foot in the apartment on
11 Saturday. What he admitted to was Mr. Blinn argued --
12 and I won't go into all of the details about it. What
13 he admitted to you, when you look at that accomplice
14 liability instruction, is sufficient for you to find
15 him guilty on the spot based on his own admissions of
16 Counts 3, 4, 5, and 6 as an accomplice, guilty of
17 Felony Murder First Degree, two different counts, the
18 Robbery and the Burglary in the First Degree. He wants
19 to say that there is a defense. That is hogwash. He
20 had to have known, again, taking his word as truth,
21 that a gun was going to be involved. He claimed that
22 was the reason that he bailed out was because a gun was
23 going to be involved. He had reason to believe that
24 the accomplices were going to be harmed. The so-called
25 defense fails immediately. Even under his own words,

1 he is guilty of most of the crimes, ladies and
2 gentlemen.

3 Now, Mr. Smith had a chance to concoct his story.
4 He was tipped off by Ms. Sabin-Lee. He was in Georgia.
5 Mr. Smith couldn't have known, of course, how far
6 reaching accomplice liability is under the law. He
7 couldn't have known that. He had to have figured, when
8 he was talking to the police, so long as he didn't
9 acknowledge actually being at the scene, well, he is
10 not going to be held responsible, so that's what he
11 tells the police. I didn't go.

12 Members of the jury, he was there. He did kill
13 Ruben Doria, and he did bring the weapons into this
14 crime scene. He did these things, and he premeditated
15 the death of Ruben Doria. He settled on his purpose,
16 and he announced his purpose. They weren't going to
17 leave witnesses, and he carried through on his purpose.
18 He is responsible for Aggravated First Degree Murder.

19 Now, with respect to this topic of premeditation.
20 When you read the instruction very carefully, it will
21 tell you that the defendant or an accomplice
22 premeditated --

23 MR. WEAVER: Objection. That's not what it says.

24 THE COURT: Restate what you said.

25 MR. COSTELLO: The instruction says that the

1 defendant or an accomplice must premeditate.

2 MR. WEAVER: That's not what the instruction says.

3 THE COURT: I would say, refer to the
4 instructions, ladies and gentlemen.

5 MR. COSTELLO: You will be able to read it for
6 yourselves, members of the jury. The State must prove
7 that at least one of the accomplices premeditated. The
8 State does not have to prove to you that both of the
9 accomplices premeditated, personally premeditated, in
10 killing these victims. Please have that in mind when
11 you evaluate proof of premeditation. That is to say
12 that Mr. Smith premeditates the death of Mr. Doria and
13 carries it out.

14 Mr. Jackson, having knowledge that a murder is
15 underway, he is an accomplice in the crime of Murder
16 because he sees it unfolding. He has been told that
17 you can't leave witnesses. He then is appropriately
18 found guilty of Premeditated Murder because his
19 accomplice has premeditated the Murder whether or not
20 Mr. Jackson personally premeditated the murder. It is
21 a very important legal principle that I urge you to
22 have in mind.

23 Let me turn my focus finally to Mr. Jackson.
24 Essentially, the defense that has been to you is that
25 Mr. Jackson is not responsible for Counts 1 or 2

1 because he didn't foresee the bloodshed. He was
2 shocked when he got on a bus in the middle of this
3 criminal episode and he left. He met up with the
4 others later that evening. That particular version,
5 ladies and gentlemen, is laughable. If this were not
6 such a serious case, we could all have a chuckle about
7 it.

8 Mr. Jackson initially denied ever going inside
9 Mr. Doria's apartment, ever. He backed away from that.
10 He acknowledged that he was part of the Friday night
11 effort. Then, he denied that he went over there on
12 Saturday. His story right from the get-go is painfully
13 incredible. He acknowledged that he did go, but he
14 really didn't do anything, he would have us believe,
15 besides get them in the door. Well, freeze frame and
16 stop right there. Based on Mr. Jackson's own
17 admissions, you can take those verdict forms and fill
18 in Counts 3, 4, 5, and 6 guilty, based on what he said
19 just standing alone.

20 The question for Counts 1 and 2 is, did he know,
21 general knowledge, as the Court's instructions explain,
22 did he know that the crime of murder was underway and
23 did he assist in any way with that crime? Plainly, he
24 did just as Mr. Spencer did. Referring to Mr. Doria,
25 he took the knife and plunged it into the man's back at

1 his insistence.

2 As to Mr. Abrazado, Mr. Spencer told you that it
3 was Mr. Jackson that held the man's head back and cut
4 his throat. He personally premeditated the murder of
5 Mr. Abrazado. Mr. Weaver made much of the notion that
6 is why Mr. Abrazado is on his back instead of pitching
7 forward. Well, when somebody's head is pulled back and
8 their throat is cut, a person's body follows their
9 head. That is a pretty easy thing to figure out how he
10 could end up on his back.

11 You know, responding point by point to these
12 particular details, I don't have the time to do that.
13 I'm sure that you don't have the patience to hear it.
14 You are going to be in that jury room thinking about
15 each one of those versions that you've heard from these
16 defendants and what the true facts are.

17 Ladies and gentlemen, I'm going to tell you that,
18 you know, this case is nearly in your hands. Mr. Blinn
19 and I are honored to represent the people of the state
20 of Washington. We, on their behalf, thank you for your
21 service in this case. It certainly has been, clearly,
22 a sacrifice for you to serve in such a lengthy case in
23 such a serious matter, and we thank you for that.

24 Ruben and Warren's lives deserve the protection of
25 the law. Any life is precious, beyond measure. The

1 defendants have received the due process of law with
2 all of its protections. They have received a fair
3 trial. Now, it is time for justice to be served for
4 the people of Washington and for Ruben and for Warren.
5 It is time that these defendants be held to account for
6 the heinous crimes that they've committed. It is time
7 for you, as the conscience of the community --

8 MR. NESS: Objection.

9 THE COURT: Sustained.

10 MR. COSTELLO: Members of the jury, it is time for
11 you, as a jury, to return guilty verdicts as to every
12 charge. Thank you for listening.

13 (The Court thanked and excused the alternate juror.)

14 (The Court excused the jurors to the deliberation room.)

15 THE COURT: Back on the record, Counsel, have you
16 examined the exhibits to determine that only those
17 admitted into evidence are included to be sent to the
18 jury room for the State?

19 MR. COSTELLO: Yes.

20 MR. BLINN: Yes.

21 THE COURT: Mr. Weaver?

22 MR. WEAVER: I'm satisfied.

23 THE COURT: Mr. Ness.

24 MR. NESS: Yes.

25 THE COURT: Since they have been properly

1 segregated, I'll let Mrs. Winnie take those back.

2 Make sure that Mrs. Winnie has a location that she
3 can contact you, and you can be back here in 15 or
4 20 minutes notice in case we have a question or a
5 verdict.

6 Then, you can excuse the jury. We'll let them
7 come back tomorrow, whatever.

8 The only other question that I've got, if they
9 want to play the videotape, any problem with us closing
10 the courtroom just to everybody except Mrs. Winnie and
11 the jurors and letting them run it on this little
12 machine here? She will tell them not to discuss the
13 case in her presence, only to let her know if she is to
14 replay any part of it.

15 MR. NESS: As the Court knows, you have to keep
16 control of that whole process. If they ask more than
17 one time, then we need to have --

18 THE COURT: I don't agree. I will tell you that
19 right now. The Court doesn't know that. There
20 certainly was an issue years ago about this, but I
21 don't think that is an issue anymore.

22 If the jury wants to play the videotape, that is
23 them making a decision about what they want to look at.
24 It is not the Court emphasizing anything.

25 MR. NESS: I understand. If they want to play it

1 like ten times --

2 THE COURT: I don't care. They can play it as
3 much as they want.

4 MR. NESS: That's fine.

5 THE COURT: The only thing is, I'm going to let
6 Mrs. Winnie -- unless you have an objection to that --

7 MR. NESS: As long as the courtroom is closed and
8 that. If we need to put on the record later the number
9 of times they wish to watch it, we might ask for that.

10 MR. BLINN: Judge, I don't want to interrupt, but
11 there's a juror who has to pay for extra daycare. Can
12 we excuse them?

13 THE COURT: We can in a moment, I suppose. Let
14 her take the stuff back, and then it is sort of
15 official that it has been segregated.

16 Is there anything else that we need to talk about?

17 MR. COSTELLO: No.

18 MR. NESS: No.

19 THE COURT: I think that we've got it covered. It
20 sounds like you agree with having the judicial
21 assistant handle the playing of any recording then?

22 MR. NESS: I have no problem with that.

23 MR. WEAVER: That's fine.

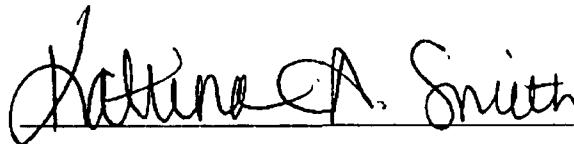
24 MR. BLINN: Yes.

25 THE COURT: Thanks, guys.

*****CERTIFICATE*****

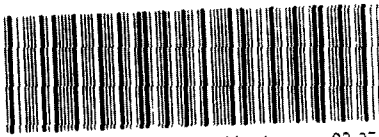
I, Katrina A. Smith, do hereby certify that the foregoing transcript entitled Verbatim Report of Proceedings, February 24th, 2009, was taken by me stenographically and reduced to the foregoing, and that the same is true and correct as transcribed.

DATED at Tacoma this 5th day of October 2009.

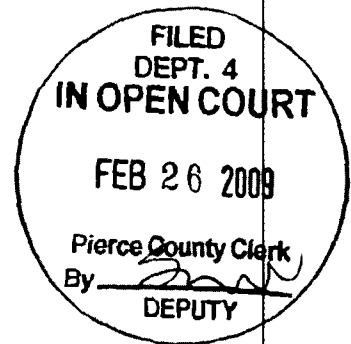
A handwritten signature in cursive script that reads "Katrina A. Smith". The signature is written in dark ink and is positioned above a horizontal line.

KATRINA A. SMITH/SM-IT-HK-302N9

APPENDIX V



08-1-00299-5 31576235 CTINJY 02-27-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00299-5 ✓

08-1-00298-7

vs.

DARRELL KANTREAL JACKSON ✓

TYREEK DEANTHONY SMITH
Defendant.

COURT'S INSTRUCTIONS TO THE JURY

DATED this 23 day of February, 2009.

[Signature]
JUDGE

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, stipulations, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 3

Each defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence.

INSTRUCTION NO. 4

A separate crime is charged in each count. You must separately decide each count charged against each defendant. Your verdict on one count as to one defendant should not control your verdict on any other count or as to the other defendant.

INSTRUCTION NO. 5

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. *One is not necessarily more or less valuable than the other.*

INSTRUCTION NO. 6

You may consider a statement made out of court by one defendant as evidence against that defendant, but not as evidence against another defendant.

INSTRUCTION NO. 7

You may give such weight and credibility to any alleged out-of-court statements of the defendant as you see fit, taking into consideration the surrounding circumstances.

INSTRUCTION NO. 8

Testimony of an accomplice, given on behalf of the State of Washington, should be subjected to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.

INSTRUCTION NO. 9

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

INSTRUCTION NO. 10

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime.

INSTRUCTION NO. 11

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result, which constitutes a crime.

INSTRUCTION NO. 12

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance or result when he or she is aware of that fact, circumstance or result. It is not necessary that the person know that the fact, circumstance or result is defined by law as being unlawful or an element of a crime.

If a person has information which would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly is required to establish an element of a crime, the element is also established if a person acts intentionally.

INSTRUCTION NO. 13

A person commits the crime of murder in the first degree, as charged in counts I and II for each defendant, when with a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person.

INSTRUCTION NO. 14

Premeditated means thought over beforehand. When a person, after any deliberation, forms an intent to take human life, the killing may follow immediately after the formation of the settled purpose and it will still be premeditated. Premeditation must involve more than a moment in point of time. The law requires some time, however long or short, in which a design to kill is deliberately formed.

INSTRUCTION NO. 15

To convict the defendant Darrell Jackson of the crime of murder in the first degree, Count

I. each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 22nd day of September, 2007, the defendant Darrell Jackson, or an accomplice acted with intent to cause the death of Ruben Doria;
- (2) That the intent to cause the death was premeditated;
- (3) That Ruben Doria died as a result of defendant's or an accomplice's acts; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

To convict the defendant Darrell Jackson of the crime of murder in the first degree, count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about 22nd day of September, 2007, the defendant Darrell Jackson or an accomplice acted with intent to cause the death of Abraham Abrazado;
- (2) That the intent to cause the death was premeditated;
- (3) That Abraham Abrazado died as a result of defendant's or an accomplice's acts; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 17

To convict the defendant Tyreek Smith of the crime of murder in the first degree count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about 22nd day of September, 2007, the defendant Tyreek Smith or an accomplice acted with intent to cause the death of Ruben Doria;
- (2) That the intent to cause the death was premeditated;
- (3) That Ruben Doria died as a result of defendant's or an accomplice's acts; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 18

To convict the defendant Tyreek Smith of the crime of murder in the first degree, count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about 22nd day of September, 2007, the defendant Tyreek Smith or an accomplice acted with intent to cause the death of Abraham Abrazado;
- (2) That the intent to cause the death was premeditated;
- (3) That Abraham Abrazado died as a result of defendant's or an accomplice's acts; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 19

A person commits the crime of murder in the first degree, as charged in counts III and IV for each defendant, when he or an accomplice commits or attempts to commit robbery in the first degree or burglary in the first degree and in the course of or in furtherance of such crime or in immediate flight from such crime he or another participant causes the death of a person other than one of the participants.

INSTRUCTION NO. 20

A "participant" in a crime is a person who is involved in committing that crime, either as a principal or as an accomplice. A victim of a crime is not a "participant" in that crime.

INSTRUCTION NO. 21

A person commits the crime of robbery when he or she unlawfully and with intent to commit theft thereof takes personal property, not belonging to the defendant, from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial. The taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom it was taken, such knowledge was prevented by the use of force or fear. The taking constitutes robbery, even if death precedes the taking, whenever the taking and a homicide are part of the same transaction.

INSTRUCTION NO. 22

A person commits the crime of robbery in the first degree when in the commission of a robbery or in immediate flight therefrom he or an accomplice is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon or inflicts bodily injury.

INSTRUCTION NO. 23

A person commits the crime of burglary in the first degree when he or she enters or remains unlawfully in a building with intent to commit a crime against a person or property therein, and if, in entering or while in the building or in immediate flight therefrom, that person or an accomplice in the crime is armed with a deadly weapon.

INSTRUCTION NO. 24

A person commits the crime of attempted robbery in the first degree or burglary in the first degree when, with intent to commit that crime, he or she does any act which is a substantial step toward the commission of that crime.

INSTRUCTION NO. 25

A substantial step is conduct, which strongly indicates a criminal purpose and which is more than mere preparation.

INSTRUCTION NO. 26

To convict the defendant Darrell Jackson of the crime of murder in the first degree, count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 22nd day of September, 2007 the defendant or an accomplice was committing or attempting to commit robbery in the first degree or burglary in the first degree:

(2) That the defendant or an accomplice caused the death of Ruben Doria in the course of and in furtherance of such crime or in immediate flight from such crime;

(3) That Ruben Doria was not a participant in the crime; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 27

To convict the defendant Darrell Jackson of the crime of murder in the first degree, count IV, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 22nd day of September, 2007 the defendant or an accomplice was committing or attempting to commit robbery in the first degree or burglary in the first degree;

(2) That the defendant or an accomplice caused the death of Abraham Abrazado in the course of and in furtherance of such crime or in immediate flight from such crime;

(3) That Abraham Abrazado was not a participant in the crime; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 28

To convict the defendant Tyreek Smith of the crime of murder in the first degree, count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 22nd day of September, 2007 the defendant or an accomplice was committing or attempting to commit robbery in the first degree or burglary in the first degree;

(2) That the defendant or an accomplice caused the death of Ruben Doria in the course of and in furtherance of such crime or in immediate flight from such crime;

(3) That Ruben Doria was not a participant in the crime; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 29

To convict the defendant Tyreek Smith of the crime of murder in the first degree, count IV, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about the 22nd day of September, 2007 the defendant or an accomplice was committing or attempting to commit robbery in the first degree or burglary in the first degree;

(2) That the defendant or an accomplice caused the death of Abraham Abrazado in the course of and in furtherance of such crime or in immediate flight from such crime;

(3) That Abraham Abrazado was not a participant in the crime; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 30

It is a defense to a charge of murder in the first degree based upon committing or attempting to commit robbery in the first degree or burglary in the first degree that the defendant:

- (1) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and
- (2) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury; and
- (3) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article or substance; and
- (4) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty as to this charge.

INSTRUCTION NO. 31

To convict the defendant Darrell Jackson of the crime of robbery in the first degree, count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 22nd day of September, 2007 the defendant or an accomplice unlawfully took personal property, not belonging to the defendant, from the person or in the presence of Ruben Doria;

(2) That the defendant or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person ;

(4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking or to prevent knowledge of the taking;

(5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon or inflicted bodily injury; and

(6) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 32

To convict the defendant Tyreek Smith of the crime of robbery in the first degree, count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 22nd day of September, 2007 the defendant or an accomplice unlawfully took personal property, not belonging to the defendant, from the person or in the presence of Ruben Doria;
- (2) That the defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's use or threatened use of immediate force, violence or fear of injury to that person;
- (4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking or to prevent knowledge of the taking;
- (5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon or inflicted bodily injury; and
- (6) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 33

To convict the defendant Darrell Jackson of the crime of burglary in the first degree, count VI, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 22nd day of September, 2007, the defendant or an accomplice entered or remained unlawfully in a building located at 9315 South Ash Street, Apt. C;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice in the crime charged was armed with a deadly weapon; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 34

To convict the defendant Tyreek Smith of the crime of burglary in the first degree, count VI, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 22nd day of September, 2007, the defendant entered or remained unlawfully in a building located at 9315 South Ash Street, Apt. C;

(2) That the entering or remaining was with intent to commit a crime against a person or property therein;

(3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice in the crime charged was armed with a deadly weapon; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 35

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the judicial assistant. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions and several verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your decision. The presiding juror must sign the verdict form(s) and notify the judicial assistant. The judicial assistant will bring you into court to declare your verdict.

INSTRUCTION NO. 36

If you find a defendant guilty of premeditated murder in the first degree, count I or count II, as defined in Instruction 17 or 18 as to defendant Smith or Instruction 15 or 16 as to defendant Jackson, you must then determine whether any of the following aggravating circumstances exist as to each defendant and as to each count:

The defendant committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, or

There was more than one person murdered and the murders were part of a common scheme or plan or the result of a single act of the person or

The murder was committed in the course of, in furtherance of, or in immediate flight from robbery in the first degree.

The murder was committed in the course of, in furtherance of, or in immediate flight from burglary in the first degree.

The State has the burden of proving the existence of an aggravating circumstance beyond a reasonable doubt. In order for you to find that there is an aggravating circumstance in this case, you must unanimously agree that the aggravating circumstance has been proved beyond a reasonable doubt.

You should consider each of the aggravating circumstances above separately. If you unanimously agree that a specific aggravating circumstance has been proved beyond a reasonable doubt, you should answer the special verdict "yes" as to that circumstance.

For any of the aggravating circumstances to apply, the defendant must have been a major participant in acts causing the death of Ruben Doria or Abraham Abrazado and the aggravating factors must specifically apply to the defendant's actions. The State has the burden of proving

this beyond a reasonable doubt. If you have a reasonable doubt whether the defendant was a major participant, you should answer the special verdict "no."

INSTRUCTION NO. 37

You will also be furnished with special verdict forms. If you find the defendant not guilty as to any particular count do not use the special verdict form for that count. If you find the defendant guilty as to any particular count, you will then use the special verdict form for that count and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict forms "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no."

INSTRUCTION NO. 38

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime in counts I, II, III, IV, V, VI.

If one participant in a crime is armed with a deadly weapon, all accomplices to that participant are deemed to be so armed, even if only one deadly weapon is involved.

A deadly weapon is an implement or instrument that has the capacity to inflict death and, from the manner in which it is used, is likely to produce or may easily produce death. A knife having a blade longer than three inches is a deadly weapon. Whether a knife having a blade less than three inches long is a deadly weapon is a question of fact that is for you to decide. A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded. A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

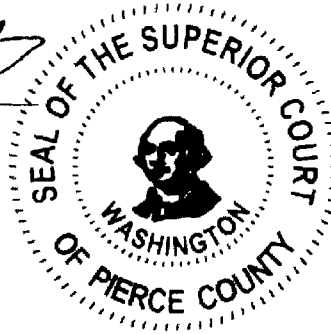
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 13 day of March, 2015



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: Mar 13, 2015 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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PIERCE COUNTY PROSECUTOR

March 13, 2015 - 12:20 PM

Transmittal Letter

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Case Name: PRP of Jackson

Court of Appeals Case Number: 46411-0

Is this a Personal Restraint Petition? ☒ Yes ☐ No

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Personal Restraint Petition (PRP)

☒ Response to Personal Restraint Petition

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Petition for Review (PRV)

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Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us